



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 315-2023

Saskatchewan Health Authority

June 27, 2024

Summary:

The Applicant submitted an access to information request to the Saskatchewan Health Authority (SHA). The SHA extended the response time by an additional 30 days pursuant to section 12 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and issued a fee estimate to the Applicant. The Applicant paid a 50% deposit and requested a review by the Commissioner when they did not receive a response pursuant to section 7 of LA FOIP. After requesting a review by the Commissioner, the SHA sent a response to the Applicant indicating it was releasing records to the Applicant but withholding portions of them. The SHA cited subsections 16(1)(a), (b), (c), (d), 18(1)(b), 21(c) and 27(a) of LA FOIP as its reasons for withholding portions of the records from the Applicant. The Commissioner made several findings, including that the SHA did not issue its fee estimate within the legislated timeline, and that it did not comply with sections 7 or 12 of LA FOIP. He found that the SHA properly applied subsections 16(1)(a) and (b) of LA FOIP on certain pages of the records at issue but not in all cases. He found that the SHA did not properly apply subsection 16(1)(c), (d) and 18(1)(c) of LA FOIP. He found that the SHA properly applied subsection 21(c) of LA FOIP. Finally, he found that the SHA cannot rely on subsection 27(a) of LA FOIP as a reason to withhold information. The Commissioner made several recommendations, including that the SHA refund the Applicant the 50% deposit paid by them. He recommended that the SHA adjust its procedures so that it issues fee estimates within 30 days of receiving an access request. He recommended 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. He also recommended that the SHA reconsider its discretion where the Commissioner found that the SHA properly applied subsections 16(1)(a), (b) and 21(c) of LA FOIP and determine if it will release additional information to the Applicant. Finally, he recommended that the SHA follow the recommendations set out in the Appendix to the Report.

I BACKGROUND

[1] On March 31, 2023, the Saskatchewan Health Authority (SHA) 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 memos from [Physician Executive – Integrated Rural Health], [Executive Director, Infrastructure Management], and [President and CEO] regarding transferring COVID-19 patients out of Saskatchewan.

[2] The Applicant specified the time period of September 1, 2021 to October 31, 2021 for the records sought.

[3] The SHA issued an invoice dated April 3, 2023 to the Applicant for payment of the \$20.00 application fee.

[4] On April 5, 2023, the SHA received payment of the application fee.

[5] 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), (b), and (c) of LA FOIP as its reasons for extending the time period.

[6] In a letter dated June 27, 2023, the SHA issued a fee estimate to the Applicant. The letter specified that the fee estimate was \$373.00 for approximately 313 pages of records. The letter asked the Applicant to provide a deposit of \$186.50.

[7] On August 29, 2023, the SHA received payment of \$186.50.

[8] On October 18, 2023, the Applicant emailed the SHA to ask for an update on the processing of the access request.

[9] On the same day, the SHA responded that it needed to send notices to third parties.

- [10] On November 22, 2023, after not receiving a response from the SHA, the Applicant requested a review by my office.
- [11] On November 27, 2023, my office requested that the SHA issue a written notice pursuant to section 7 of LA FOIP to the Applicant.
- [12] On December 1, 2023, the SHA responded indicating it had sent notices to third parties on November 6th, 20th, and the 30th, 2023, and it was preparing to send additional third party notices on December 8, 2023.
- [13] On December 4, 2023, my office responded to the SHA indicating that notices to third parties should have been sent within 30 days after the SHA had received the access request. Or, if the time to respond was extended, then the notices should have been sent within 60 days of receiving the access request. My office asked that the SHA send the written notice pursuant to section 7 by December 11, 2023.
- [14] In an email to my office dated December 8, 2023, the SHA indicated it would not be able to meet the deadline of December 11, 2023. The SHA acknowledged the delays in meeting its obligations pursuant to section 7, and subsections 12(3) and 33(3) of LA FOIP. It provided reasons for the delay, including how attachments to emails were missing so they had to prompt “the record holder” to search further, it needed to initiate “internal and external consultations”, and because of the third parties. It said that it would “continue to release the records as soon as possible.”
- [15] On December 14, 2023, my office asked the SHA for the contact information of the third parties so that the third parties would have the opportunity to provide a submission to my office during my office’s review process.
- [16] In an email dated December 18, 2023 to my office, the SHA identified the Ministry of Health as well as Fox Flight Inc. as the third parties. It also said, “the other 3rd parties were given courtesy notices – no exemptions applied.”

- [17] The next day, on December 19, 2023, the SHA indicated that the Ministry of Health did not object to the release of records.
- [18] On December 20, 2023, my office notified the SHA, the Applicant, and Fox Flight Inc. that my office was undertaking a review.
- [19] On December 28, 2023, my office received a submission from the Applicant.
- [20] On January 19, 2024, the SHA provided my office with its submission.
- [21] Then, in a letter dated January 30, 2024, the SHA provided a written notice pursuant to section 7 of LA FOIP to the Applicant. The SHA indicated it was withholding portions of the records pursuant to subsections 16(1)(a), (b), (c), (d), 18(1)(b), and 21(c) of LA FOIP. It also cited subsection 27(a) of LA FOIP as a reason for withholding a portion of a record, which I will discuss later in this Report.
- [22] On June 18, 2024, the third party provide its submission to my office.

II RECORDS AT ISSUE

- [23] The records at issue are as follows:

- “Package 1” – 223 pages of records,
- “Package 2” – 109 pages of records,
- “Package 3” – 8 pages of records.

- [24] Each of the packages consist of emails and their attachments, which were withheld in part.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[25] The SHA qualifies as a “local authority” pursuant to subsection 2(1)(f)(xiii) of LA FOIP. Fox Flight Inc. qualifies as a “third party” pursuant to subsection 2(1)(k) 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?

[26] 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:

[27] 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.

[28] 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.

[29] 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?

[30] 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.

[31] 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]

[32] 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.

[33] 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.

[34] 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]

[35] Page 49 of the *Guide to 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.

[36] 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.

b. Did the SHA issue the fee estimate within the legislated timeline?

[37] Local authorities must respond to access requests within the time period set out in subsection 7(2) of LA FOIP. That is, local authorities have 30 days to respond. However,

if a local authority issues a fee estimate, then subsection 9(3) of LA FOIP provides that the 30-day clock is suspended until the applicant notifies the local authority that they (the applicant) wishes to proceed. It says:

9(3) Where an estimate is provided pursuant to subsection (2), the time within which the head is required to give written notice to the applicant pursuant to subsection 7(2) is suspended until the applicant notifies the head that the applicant wishes to proceed with the application.

[38] Therefore, a local authority must issue a fee estimate within 30 days of receiving the access request. In [Review Report 323-2019](#), my office said:

[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.

[39] Since the 30-day time period began on April 6, 2023, then the SHA would have had until May 6, 2024 to issue a fee estimate. It did not. It issued its fee estimate on June 27, 2023, or 52 days after the last day it could have issued a fee estimate. I find that the SHA did not issue a fee estimate within the legislated timeline.

[40] Page 73 of my office's *Guide to FOIP*, Ch. 3 suggests that local authorities issue fee estimates within the first three to 10 to days of receiving access request so there is still time process the access request once a deposit is received.

[41] I recommend that the SHA refund the Applicant the \$186.50 that they paid as a deposit within 30 days of issuance of this Report.

[42] I note that the SHA had relied on section 12 of LA FOIP to extend the 30-day time period set out in subsection 7(2) of LA FOIP. However, the circumstances set out in subsection 12(1) of LA FOIP (quoted earlier) do not allow a local authority to extend the 30-day time period for the purposes of preparing and issuing a fee estimate.

[43] Subsection 9(3) of LA FOIP speaks to the time within which a local authority is to issue a fee estimate. Specifically, subsection 9(3) references the time period set out in subsection 7(2) of LA FOIP. This means that the local authority is to issue a fee estimate within the time period set out in subsection 7(2) of LA FOIP. In other words, the fee estimate should be issued within 30 days of receiving the access request. I recommend that the SHA adjust its procedures, so it issues fee estimates within 30 days of receiving an access request.

c. Did the SHA comply with section 12 of LA FOIP?

[44] Earlier, I quoted section 12 of LA FOIP. If a local authority relies on section 12 of LA FOIP to extend the 30-day time period set out in subsection 7(2) of LA FOIP by an additional 30 days, then subsection 12(3) of LA FOIP provides that the local authority is to respond to the access request within the period of extension. In past reports, my office has said that if a local authority has not complied with subsection 12(3) of LA FOIP, then there is no need for me to consider whether it properly extended the time period pursuant to subsection 12(1) of LA FOIP (see [Review Report 122-2023](#) at [18]; [Review Report 017-2023](#) at [20]; [Review Report 313-2023](#) at [32]). I find that the SHA did not comply with section 12 of LA FOIP as it did not respond to the access request within the period of extension.

[45] Overall, I find that the SHA did not comply with section 7 of LA FOIP. In its submission, the SHA provided the following explanation as to why it did not comply with the legislated timeline set out in section 7 of LA FOIP:

The SHA acknowledges that the delays in this response did not meet our legislative obligations for LA FOIP Access to Information Request 23-24-003 pursuant to section 7 and subsection 12(3). This was due to:

1. A large volume of records
 - Delay in receiving the records
 - Prepping documents (converting emails, attachments, word documents to PDF format)
 - Separating documents for 3rd party review
2. Upon review of the responsive records, it was identified that some of the records were missing attachments; as a result, the SHA asked the record holder to search for those documents, which caused a further delay.

3. Internal and external consultations
4. Delay in receiving payment of fees
5. The SHA has received a large number of LAFOIP Access to Information requests

[46] I need to address the fourth reason given by the SHA as a reason for not meeting legislated timelines. As discussed earlier, subsection 9(3) of LA FOIP provides that the time within a local authority is to respond to an access request pursuant to subsection 7(2) of LA FOIP is suspended until the applicant notifies the local authority that they wish to proceed. Therefore, there is no such thing as a “delay in receiving payment of fees” as a reason for the SHA not meeting its legislated timeline.

[47] Regarding the remainder of the reasons, 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. This would include not just providing training to its access to information and privacy officers, but to all staff, so they understand their responsibilities to search and provide records to the access to information and privacy officers promptly.

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

[48] The SHA applied subsection 16(1)(a) of LA FOIP to the following pages:

- Pages 1, 3 to 6, 9 to 17, 19 to 30, 33 to 41, 45, 47 to 49, 51, 54, 57, 59 to 62, 66, 76, 109 to 113, 124 to 125, 128 to 131, 136, 156, 159 to 161, 163, 165, 167, 182 to 184, 189 to 191, 197 to 200, 203 to 204, 214, 217 to 218, and 220 to 222 of Package 1.
- Pages 16 to 17, 25, 36, 41 to 42, 46 to 47, and 104 of Package 2.
- Pages 1 to 2, 4 to 5, and 7 of Package 3.

[49] 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;

[50] 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 FOIP*, Ch. 4), pp. 107-110)

[51] 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?**

[52] 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.

[53] In its submission, the SHA asserted that the pages listed at paragraph [47] contains advice, recommendations, analyses, and/or proposals.

[54] Based on a review, I found the following regarding Package 1:

- Portions of pages 40, 112, 159, 160, and 191 contain recommendations. Pages 40 and 112 are a part of Situation, Background, Analyses, Recommendation (or SBAR) records that contains recommendations. Pages 159 and 160 is an email that appears to contain the contents of a SBAR record. The bottom of page 159 and 160 contains recommendations that would appear in a SBAR record.
- Portions of pages 20, 38, 47, 48, 57 and 222 contain proposals. “Figure 5” on page 20 contains a proposed organizational structure. The second paragraph on page 38 contains a proposal regarding moving patients out of province. Pages 47, 48 and 222 contain a proposal for out of province transportation. Page 57 contains a proposal for the threshold for potential out of province transfer.
- Portions of pages 9 to 14, 37, 38, 109, 110, 111 and 112 contain analyses. Pages 9 to 14 contain analyses of the current state, including covid case trajectory, impact of vaccines, hospital capacity, and ICU pressures. Page 37 is part of a SBAR record where the content under the “Background” header contains analyses of a situation. Page 38 contains an “Assessment” portion, which contains analyses. Page 109 contains an analyses under the “Background” header. Pages 110 to 112 is a continuation of the analyses from page 109.
- A portion of page 1 contains policy options regarding patient transfers.

[55] Based on a review, I found the following regarding Package 2:

- Portions of pages 15 and 16 qualify as advice. Specifically, the redacted sentence in the email timestamped 7:50 a.m. on page 15 qualifies as advice because an SHA employee is suggesting a course of action. Further, the first sentence and the last sentence of the email timestamped 7:35 a.m. qualifies as advice by a Ministry of Health employee.
- A portion of page 46 contains recommendations. Specifically, the content under the “Recommendation” header on page 46 contains recommendations as part of a briefing note by the COVID-19 Provincial Emergency Operations Centre (of which the SHA was a part of).
- A portion of page 47 contains a proposal. Specifically, the content under the heading “Proposed Surge Strategy” is a proposal by the COVID-19 Provincial Emergency Operations Centre.
- Page 104 contains analyses. Specifically, it contains analyses about the intensive care units.

- Page 47 is part of a briefing note that has a section under the header “Alternative Options”. The content under the header contains a policy option.

[56] Based on a review, I found that a portion of page 7 of Package 3 contained recommendations. Specifically, page 7 of part of a briefing note. The contents under the “Recommendations” heading on page 7 contain recommendations.

[57] I will consider the above listed pages to see if they meet the second part of the two-part test for subsection 16(1)(a) of LA FOIP.

[58] However, for the remaining pages to which the SHA applied subsection 16(1)(a) of LA FOIP, I did not find that they contained advice, recommendations, proposals, analyses or policy options. For example, page 19 of Package 1 is an email by the Executive Director, Infrastructure Management of the SHA to two other SHA employees. The body of the email was redacted. However, the content of the email describes instructions by the Executive Director to the two other SHA employees. Instructions do not qualify as advice, recommendations, proposals, analyses or policy options. Similarly, page 25 of Package 2 is another email by the Executive Director, Infrastructure Management of the SHA where they give instruction to an employee at the Saskatchewan Public Safety Agency on how to edit a briefing report. Finally, page 1 of Package 3 contains an email by the former President and CEO of the SHA. The email contains a clarification on process, a description of the current state, as well as a reason for a certain process.

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

[59] Page 110 of the *Guide to 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).

- [60] As I have said in [Review Report 292-20217, 348-20217](#) 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.
- [61] The SHA did not explain the role of the individuals in the development of the advice, proposals, recommendations, analyses and/or policy options. Therefore, I must determine if the second part of the two-part test is met based on a review of the records themselves.
- [62] Earlier, I found that portions of pages 1, 9 to 14, 20, 37, 38, 40, 47, 48, 57, 109 to 112, 159, 160, 191 and 222 of Package 1 contains recommendations, proposals, analyses or policy options. On the face of the records, I find that the recommendations, proposals, analyses or policy options were developed by SHA employees except for page 20. As described earlier, page 20 of Package 1 contains a proposed organizational structure. However, on the face of the record, my office cannot determine who developed the proposal or if it was developed by of for the SHA. Therefore, portions of pages 1, 9 to 14, 37, 38, 40, 47, 48, 57, 109 to 112, 159, 160, 191 and 222 of Package 1 meet the second part of the two-part test for subsection 16(1)(a) of LA FOIP and I find that the SHA properly applied subsection 16(1)(a) of LA FOIP to these pages. I, however, find that the SHA did not properly apply subsection 16(1)(a) of LA FOIP to page 20 of Package 1. My findings and recommendations are set out in the Appendix.
- [63] Earlier, I found that portions of pages 15, 16, 46, 47 and 104 of Package 2 contained advice, recommendations, a proposal, analyses and a policy option. Based on a review of each of the pages, the advice, recommendations, proposal, analyses and a policy option were developed by SHA employees except for advice in the email timestamped 7:35 a.m. on page 16. The advice was developed by a Ministry of Health employee for the SHA. Therefore, portions of pages 5, 16, 46, 47 and 104 of Package 2 meets the second part of the two-part test and I find that the SHA properly applied subsection 16(1)(a) of LA FOIP to these pages. My findings and recommendations are set out in the Appendix.
- [64] Earlier, I found that a portion of page 7 of Package 3 contained recommendations. Page 7 of part of a briefing note developed by the [COVID-19 Provincial Emergency Operations](#)

[Centre](#), of which the SHA is a part. Therefore, the SHA was a part of developing the recommendation. That portion of page 7 of Package 3 meets the second part of the two-part test for subsection 16(1)(a) of LA FOIP and I find that the SHA properly applied subsection 16(1)(a) of LA FOIP to this page. My findings and recommendations are set out in the Appendix.

[65] Before I move onto the analyzing the SHA's application of other exemptions set out in 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.

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

[67] 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.

[68] 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.

- [69] As I said in [Review Report 317-2023](#), Saskatchewan's *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 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 [65].

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

[70] The SHA applied subsection 16(1)(b) of LA FOIP to the following pages:

- Pages 1, 3 to 6, 9 to 17, 19 to 30, 33 to 41, 45 to 46, 49, 51, 54, 57, 60 to 62, 109 to 113, 124 to 125, 128 to 131, 136, 156, 163, 165, 167, 190 to 191, 197 to 200, 203 to 204, 214, 217 to 218 and 220 to 222 of Package 1.
- Pages 15 to 17, 25, 36, 46 to 47 and 104 of Package 2.
- Pages 1 to 2, 4 to 5, and 7 of Package 3.

[71] Where I have already found that the SHA properly applied subsection 16(1)(a) of LA FOIP (see Appendix), I will not consider whether it applied subsection 16(1)(b) of LA FOIP to the same portions of the record.

[72] 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;

[73] 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, pp. 115-116)

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

1. Does the record contain consultations or deliberations?

[75] 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.

[76] In its submission, the SHA asserted that the pages listed at paragraph [70] contains consultations or deliberations. It did not offer arguments to support its assertion.

[77] Based on a review, portions of pages 41, 49, 217 and 218 of Package 1 contains consultations. Page 41 is an email timestamped 4:33 p.m. by an SHA employee to a Ministry of Health employee. The SHA employee seeks the advice of the Ministry of Health employee. I find that the contents of the email qualify as a “consultation” where the SHA employee is seeking the views of a Ministry of Health employee. Page 49 contains an email timestamped 2:48 p.m. by a Media Relations Manager at the SHA. They sought the views of other SHA employees regarding the drafting of a response to media inquiries. I find that the contents of the email qualify as a consultation. Pages 217 and 218 contain an email by the Executive Director, Infrastructure Management of the SHA. They sought the views of other SHA employees regarding topics to be discussed. I find that the contents of the email qualify as a consultation. I will consider whether the portions of these pages meet the second part of the two-part test for subsection 16(1)(b) of LA FOIP.

[78] However, my office found that the contents of the remainder of pages in Package 1, 2, and 3 to which the SHA applied subsection 16(1)(b) of LA FOIP do not qualify as consultations or deliberations. For example, page 33 of Package 1 is an email by the Executive Director, Infrastructure Management of the SHA to the SHA’s President and CEO. The email

contains background information to assist the SHA's President and CEO in a meeting. Such information does not qualify as a consultation or deliberation. Page 36 of Package 2 contains an email by the Executive Director of Acute Care of the SHA to Executive Director, Infrastructure Management of the SHA. The email contains a summary of what has occurred. Such information does not qualify as a consultation or deliberation. Finally, page 2 of Package 3 contains an email by the Vice President, Community Engagement and Communications of the SHA to SHA's President and CEO. The SHA employee is providing their opinion on a matter. The contents do not qualify as a consultation or deliberation. My findings and recommendations are set out in the Appendix.

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

[79] 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.

[80] Based on a review, I found the following:

- The email on page 41 of Package 1 involves the Executive Director, Infrastructure Management of the SHA.
- The email on page 49 of Package 1 involves only SHA employees, including the Media Relations Manager.
- The email on pages 217 and 218 of Package 1 involves only SHA employees, including the Executive Director, Infrastructure Management of the SHA.

[81] Therefore, the redacted portions on pages 41, 49, 217 and 218 of Package 1 meet the second part of the two-part test for subsection 16(1)(b) of LA FOIP. I find that the SHA properly applied subsection 16(1)(b) of LA FOIP to pages 41, 49, 217 and 218 of Package 1. My findings and recommendations are in the Appendix.

[82] However, similar to my recommendation earlier regarding subsection 16(1)(a) of LA FOIP and the exercise of discretion, I recommend the SHA reconsider its exercise of its discretion and determine if it will release information where I have found that it properly applied subsection 16(1)(b) of LA FOIP.

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

[83] The SHA applied subsection 16(1)(c) of LA FOIP to pages 30, 37 to 40, 209 and 211 of Package 1.

[84] Subsection 16(1)(c) 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:

...

(c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the local authority, or considerations that relate to those negotiations;

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

1. Does the record contain positions, plans, procedures, criteria, or instructions?
 - a. Developed for the purpose of contractual or other negotiations
 - b. By or on behalf of the local authority
2. Or does the record contain considerations that relate to those negotiations?

(*Guide to LA FOIP*, Ch. 4, pp. 120-123)

[86] Pages 120 to 123 of the *Guide to LA FOIP*, Ch. 4 provide the following definitions:

- A “position” is a point of view or attitude. An opinion; stand; a way of regarding situations or topics; an opinion that is held in opposition to another in an argument or dispute.

- 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.
- A “procedure” is an established or official way of doing something; a series of actions conducted in a certain order or manner.
- “Criteria” are standards, rules, or tests on which a judgement or decision can be based or compared; a reference point against which other things can be evaluated.
- “Instructions” are directions or orders.
- “Developed” means to start to exist, experience or possess. Use of the word “developed” suggests the Legislature’s intention was for the provision to include information generated in the process leading up to the contractual or other negotiations (for example, draft versions).
- “For the purpose of” means intention; the immediate or initial purpose of something.
- A “negotiation” is a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. It can also be defined as dealings conducted between two or more parties for the purpose of reaching an understanding. It connotes a more robust relationship than “consultation”. It signifies a measure of bargaining power and a process of back-and-forth, give-and-take discussion.
- “On behalf of” means “for the benefit of”. A person does something “on behalf of” another, when he or she does the thing in the interest of, or as a representative of, the other person.
- A “consideration” is a careful thought; a fact taken into account when making a decision. Thus, a record identifying the facts and circumstances connected to positions, plans, procedures, criteria or instructions could also fall within the scope of this provision.
- “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 negotiations.

[87] In its submission, the SHA asserted that pages 30, 209 and 211 contained “plans”.

- [88] Page 30 is an email exchange between SHA employees about the SHA's insurance requirements of potential air ambulance transporters. The SHA redacted the bodies of the emails. Based on a review of the emails, my office noted that the content does not qualify as "plans" as defined above.
- [89] Page 209 is an email by an SHA employee. The body of the email refers the recipients of the email to refer to the attachment. The contents do not qualify as "plans".
- [90] Page 211 is a list of "Receiving Hospitals" in Ontario. The list does not qualify as "plans".
- [91] For pages 37 to 40, it did not identify whether they contained positions, plans, procedures, criteria or instructions. Pages 37 to 40 is a briefing note. Earlier, I had already found that subsection 16(1)(a) of LA FOIP applies to portions of these pages (see Appendix). Based on the remainder of the information on these four pages, it is unclear what content the SHA is asserting to qualify as positions, plans, procedures, criteria or instructions.
- [92] The first part of the two-part test is not met; therefore, I find that the SHA did not properly apply subsection 16(1)(c) of LA FOIP to pages 30, 37 to 40, 209 and 211 of Package 1. My findings and recommendations are set out in the Appendix.

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

- [93] The SHA applied subsection 16(1)(d) of LA FOIP to pages 14, 46 and 109 to 112 of Package 1 and pages 16 to 17, 25, 36, 46 to 47 and 104 of Package 2. Where I have already found the SHA properly applied other exemptions (see Appendix), I will not consider if it properly applied subsection 16(1)(d) of LA FOIP to the same portions.
- [94] 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;

[95] 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)

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

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

[97] As mentioned earlier in my analysis of subsection 16(1)(c) of LA FOIP, 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.

[98] In its submission, the SHA asserted that the information are plans that relate to the management of personnel.

[99] Based on a review, page 46 of Package 1 contains a plan regarding staffing and beds at different sites at one particular point in time during the COVID-19 pandemic. The redacted contents on page 46 meets the first part of the three-part test. I will consider if this page meets the second part of the three-part test.

[100] However, the remaining pages to which the SHA applied subsection 16(1)(d) of LA FOIP do not contain a plan or plans. For example, page 25 of Package 2 is an email by the

Executive Director, Infrastructure Management of the SHA where they give instruction to an employee at the Saskatchewan Public Safety Agency on how to edit a briefing report. Such information does not qualify as “plans”. Another example is at page 36 of Package 2, which contains an email by the Executive Director of Acute Care of the SHA to Executive Director, Infrastructure Management of the SHA. The email contains a summary of what has occurred. The contents describe what was agreed upon, but it does not contain a plan. My findings and recommendations are set out in the Appendix.

2. Does the plan(s) relate to:

a. The management of personnel?

b. The administration of the local authority?

[101] 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.

[102] Based on the review of the redacted contents on page 46 of Package 1, the plan identifies the staffing plan at different sites at one particular point in time during the COVID-19

pandemic. Therefore, the plan relates to the management of personnel. The second part of the three-part test is met.

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

[103] Page 126 of the *Guide to LA FOIP*, Ch. 4 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.

[104] In order for the third part of the test to be met, the plan(s) cannot yet have been implemented. However, it is not necessary for the implementation activities to have been completed.

[105] Subsection 16(1)(d) of LA FOIP similar to that of subsection 17(1)(d) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and subsection 24(1)(d) of Alberta’s *Freedom of Information and Protection of Privacy Act* (AB FOIP). In [Review Report 166-2018](#) at paragraph [30], I said:

Subsection 24(1)(d) of Alberta’s *Freedom of Information and Protection of Privacy Act* is substantially similar to subsection 17(1)(d) of FOIP. The Alberta Information and Privacy Commissioner applies the same test for this subsection as does my office. In its Order F2008-008 at paragraph [54], Alberta’s Commissioner found:

Moreover, section 24(1)(d) applies to plans *that have not yet been implemented*. **The implication is that the provision protects the premature release of plans that have already been decided by a public body.** The provision recognizes that a public body’s ability to manage personnel and administration might be compromised if information about its plans was released prior to implementation...

[Emphasis added in bold and underline]

[106] The SHA did not address the third part of the three-part test in its submission. However, based on the review of the contents of the record, the plan was specific for a short period of time. It appears that the plan had been implemented. Therefore, the third part of the three-part test is not met. I find that the SHA did not properly apply subsection 16(1)(d) of LA FOIP to page 46 of Package 1. My findings and recommendations are set out in the Appendix.

7. Did the SHA properly apply subsection 18(1)(b) of LA FOIP?

[107] The SHA applied subsection 18(1)(b) of LA FOIP to portions of pages 182 to 184 and 222 of Package 1.

[108] Subsection 18(1)(b) of LA FOIP provides:

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

...

(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to the local authority by a third party;

[109] My office uses the following three-part test to determine if subsection 18(1)(b) of LA FOIP applies:

1. Is the information financial, commercial, scientific, technical, or labour relations information of a third party?
2. Was the information supplied by the third party to a local authority?
3. Was the information supplied in confidence implicitly or explicitly?

(Guide to LA FOIP, Ch. 4, pp. 174-178)

[110] Below is my office's analysis to determine if the three-part test is met.

- 1. Is the information financial, commercial, scientific, technical, or labour relations information of a third party?***

[111] In its submission, the SHA asserted that redacted information on pages 182 to 184 of Package 1 is financial and commercial information. The SHA did not identify if the information on page 222 of Package 1 was financial, commercial, scientific, technical or labour relations information.

[112] First, I will consider the information on pages 182 to 184 of Package 1. Page 175 of my office's *Guide to LA FOIP*, Ch. 4, provides the following definitions:

- “Financial information” is information regarding monetary resources, such as financial capabilities, assets, and liabilities, past or present. Common examples are financial forecasts, investment strategies, budgets and profit and loss statements. The financial information must be specific to a third party.
- “Commercial information” is information relating to the buying, selling or exchange of merchandise or services. This can include third party associations, past history, references and insurance policies and pricing structures, market research, business plans, and customer records.

[113] Pages 182 to 184 of Package 1 is Schedule “B” of the Services Agreement between the SHA and Fox Flight Inc. It details the charges and payments. The redacted content contains the charges to transport from Saskatchewan to different locations, including Winnipeg, Thunder Bay, and Southern Ontario. It also details the repatriation fees from different locations. Finally, the redacted content contains what the SHA will pay Fox Flight Inc. for expenses such as meals, accommodations, travel, standby Rates and Repositioning fees.

[114] Based on a review of the redacted content on pages 182 to 184, I find that such information qualifies as commercial information as it is the terms and conditions for which the third party, Fox Flight Inc. would be providing its services. I will consider if pages 182 to 184 meet the second part of the two-part test for subsection 18(1)(b) of LA FOIP.

[115] Next, I will consider the redacted information on page 222. The redacted content describes what the province of Ontario did regarding patient transfers. Such information does not qualify as financial, commercial, scientific, technical or labour relations information. Page 222 does not meet the first part of the three-part test. I find that the SHA did not properly

apply subsection 18(1)(b) of LA FOIP to page 222. My findings and recommendations are set out in the Appendix.

2. Was the information supplied by the third party to a local authority?

[116] Page 176 of my office’s *Guide to LA FOIP*, Ch. 4 defines “supplied” as “provided or furnished”.

[117] Pages 177 to 178 of the *Guide to LA FOIP*, Ch. 4 provides that the contents of a contract will not normally qualify as having been supplied by a third party:

The contents of a contract involving a local authority and a third party will not normally qualify as having been supplied by a third party. The provisions of a contract, in general, have been treated as mutually generated, rather than “supplied” by the third party, even where the contract is preceded by little or no negotiation or where the final agreement reflects information that originated from a single party.

...

There are two exceptions to the general rule of “mutually generated” information in contracts. If one of these exceptions apply, the information in a contract could be found to have been supplied by the third party:

- i) *Inferred disclosure* – where disclosure of the information in a contract would permit accurate inferences to be made with respect to underlying non-negotiated confidential information supplied by the third party to the public body; and
- ii) *Immutability* – information the third party provided that is immutable or not open or susceptible to change and was incorporated into the contract without change, such as the operating philosophy of a business, or a sample of its products.

[118] The SHA did not provide arguments in its submission regarding any of the two exceptions to the general rule of “mutually generated” information in the contract at pages 182 to 184. As such, the second part of the three-part test is not met. There is no need to consider the third part of the three-part test. I find that the SHA did not properly apply subsection 18(1)(b) of LA FOIP to pages 182 to 184 of Package 1. My findings and recommendations are set out in the Appendix.

8. Did the SHA properly apply subsection 21(c) of LA FOIP?

[119] The SHA applied subsection 21(c) of LA FOIP to pages 137 to 155 of Package 1.

[120] Subsection 21(c) of LA FOIP provides:

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

...

(c) contains correspondence between legal counsel for the local authority and any other person in relation to a matter involving the provision of advice or other services by legal counsel.

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

1. Is the record a correspondence between the local authority's legal counsel and any other person?
2. Does the correspondence relate to a matter that involves the provision of advice or other services by legal counsel?

(Guide to LA FOIP, Ch. 4, p. 251)

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

1. Is the record a correspondence between the local authority's legal counsel and any other person?

[123] Page 251 of *Guide to LA FOIP*, Ch. 4, provides the following definitions:

- "Correspondence" means letters sent or received. It is an interchange of written communication.
- "Any other person" was an intentional and inclusive phrase to capture just that – any other person. The local authority must make it sufficiently clear, as to what the nature of that other person's role in the correspondence was.

[124] Pages 137 to 155 contain an email thread between SHA employees. The email thread begins with email exchanges between SHA employees who are not the SHA's legal counsel. The exchanges were regarding the drafting of language for documenting the transfer of a patient out of province. However, the email thread progresses to the point where the SHA's Chief Legal Counsel is included so that the SHA's Chief Legal Counsel could provide assistance in drafting the language. The SHA's Chief Legal Counsel then provides their assistance. The email thread qualifies as correspondence between the SHA's legal counsel and SHA employees. The first part of the two-part test is met.

2. Does the correspondence relate to a matter that involves the provision of advice or other services by legal counsel?

[125] Page 251 of the *Guide to LA FOIP*, Ch. 4 provides the following definitions:

- “In relation to” has been found to have a similar meaning as “in respect of”.
- “Legal advice” includes a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications.
- “Legal service” includes any law-related service performed by a person engaged by the local authority and who is licenced to practice law.

[126] As described above, the correspondence involved the SHA's Chief Legal Counsel providing assistance to the drafting of language documenting the transfer of a patient out of province. Based on a review of the email correspondence, I note that the SHA's Chief Legal Counsel provides a recommended course of action. Therefore, the correspondence relates to matters that involves the provision of advice by legal counsel. The second part of the two-part test is met. I find that the SHA properly applied subsection 21(c) of LA FOIP to pages 137 to 155 of Package 1. My findings and recommendations are in the Appendix.

[127] However, similar to my recommendation earlier regarding subsections 16(1)(a) and (b) of LA FOIP and the exercise of discretion, I recommend the SHA reconsider its exercise of

discretion and determine if it will release the information the SHA withheld pursuant to subsection 21(c) of LA FOIP.

9. Did the SHA properly apply subsection 27(a) of LA FOIP?

[128] In its letter dated January 30, 2024 to the Applicant, the SHA cited subsection 27(a) of LA FOIP as a reason for withholding a portion of a record. Based on a review of the records, the SHA cited subsection 27(a) of LA FOIP as its reason for withholding a portion of page 215 of Package 1.

[129] Subsection 27(a) of LA FOIP is not a provision that can be relied upon to withhold information. Subsection 27(a) of LA FOIP is a provision regarding the circumstances in which a local authority can use personal information it has under its control. It says:

27 No local authority shall use personal information under its control without the consent, given in the prescribed manner, of the individual to whom the information relates, except:

(a) for the purpose for which the information was obtained or compiled, or for a use that is consistent with that purpose;

[130] The SHA applied subsection 27(a) of LA FOIP to a telephone number that appears on page 215 of Package 1. The telephone number appears to be the telephone number of the Strategic Partnerships and Health Emergency Management Branch at the Ministry of Health. As such, there is no obvious reason as to why the telephone number should be withheld. Further, this is a use provision, not an exemption or exception to the right of access.

[131] I find that the SHA cannot rely on subsection 27(a) of LA FOIP as a reason to withhold information. My findings and recommendations are in the Appendix.

IV FINDINGS

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

- [133] I find that the SHA did not issue a fee estimate within the legislated timeline.
- [134] I find that the SHA did not comply with section 12 of LA FOIP.
- [135] I find that the SHA did not comply with section 7 of LA FOIP.
- [136] I find that the SHA properly applied subsection 16(1)(a) of LA FOIP to portions of pages 1, 9 to 14, 37, 38, 40, 47, 48, 57, 109 to 112, 159, 160, 191 and 222 of Package 1.
- [137] I find that the SHA properly applied subsection 16(1)(a) of LA FOIP to portions of pages 15, 16, 46, 47 and 104 of Package 2.
- [138] I find that the SHA properly applied subsection 16(1)(a) of LA FOIP to a portion of page 7 of Package 3.
- [139] I find that the SHA did not properly apply subsection 16(1)(a) of LA FOIP to all the pages to which it applied the exemption. See Appendix.
- [140] I find that the SHA properly applied subsection 16(1)(b) of LA FOIP to pages 41, 49, 217 and 218 of Package 1.
- [141] I find that the SHA did not properly apply subsection 16(1)(b) of LA FOIP to all the pages to which it applied the exemption. See Appendix.
- [142] I find that the SHA did not properly apply subsection 16(1)(c) of LA FOIP.
- [143] I find that the SHA did not properly apply subsection 16(1)(d) of LA FOIP.
- [144] I find that the SHA did not properly apply subsection 18(1)(b) of LA FOIP.

[145] I find that the SHA properly applied subsection 21(c) of LA FOIP to pages 137 to 155 of Package 1.

[146] I find that the SHA cannot rely on subsection 27(a) of LA FOIP as a reason to withhold information.

V RECOMMENDATIONS

[147] I recommend that the SHA refund the Applicant the \$186.50 that they paid as a deposit within 30 days of issuance of this Report.

[148] I recommend that the SHA adjust its procedures, so it issues fee estimates within 30 days of receiving an access request.

[149] 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. This would include not just providing training to its access to information and privacy officers but to all staff, so they understand their responsibilities to search and provide records to the access to information and privacy officers promptly.

[150] I recommend that the SHA reconsider its discretion and determine if it will release to the Applicant additional records where I found that the SHA properly applied subsections 16(1)(a), (b) and 21(c) of LA FOIP.

[151] I recommend that the SHA follow the recommendations in the Appendix.

Dated at Regina, in the Province of Saskatchewan, this 27th day of June, 2024.

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

Appendix

Package 1			
Page number	Exemption(s) applied by the SHA	IPC Findings	IPC Recommendations
1	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a) of LA FOIP applies to the content under the sentence "Here are some of the details of the options discussed with the Ministry:". 16(1)(a) of LA FOIP does not apply to remainder of the page. 16(1)(b) of LA FOIP does not apply.	Reconsider discretion and determine if SHA will release contents under the sentence "Here are some of the details of the options discussed with the Ministry:". Release remainder of the page.
2	Released		
3	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
4	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
5	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
6	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
7 to 8	Released		
9	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a) of LA FOIP applies.	Reconsider discretion and determine if SHA will release page.
10	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a) of LA FOIP applies.	Reconsider discretion and determine if SHA will release page.
11	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a) of LA FOIP applies.	Reconsider discretion and determine if SHA will release page.
12	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a) of LA FOIP applies.	Reconsider discretion and determine if SHA will release page.

13	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a) of LA FOIP applies.	Reconsider discretion and determine if SHA will release page.
14	16(1)(a), 16(1)(b), 16(1)(d) of LA FOIP	16(1)(a) of LA FOIP applies.	Reconsider discretion and determine if SHA will release page.
15	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
16	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
17	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
18	Released		
19	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
20	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
21	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
22	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
23	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
24	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
25	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
26	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
27	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
28	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.

29	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
30	16(1)(a), 16(1)(b), 16(1)(c) of LA FOIP	16(1)(a), 16(1)(b), 16(1)(c) of LA FOIP do not apply.	Release.
31 to 32	Released		
33	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
34	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
35	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
36	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
37	16(1)(a), 16(1)(b), 16(1)(c) of LA FOIP	<p>16(1)(a) of LA FOIP applies to content under the “Background” header.</p> <p>16(1)(a) of LA FOIP does not apply to remainder of the page.</p> <p>16(1)(b), 16(1)(c) of LA FOIP do not apply.</p>	<p>Reconsider discretion and determine if SHA will release content under the “Background” header.</p> <p>Release remainder of the page.</p>
38	16(1)(a), 16(1)(b), 16(1)(c) of LA FOIP	<p>16(1)(a) of LA FOIP applies to the second paragraph on the page.</p> <p>16(1)(a) of LA FOIP applies to the content under the “Assessment” header, but not the content under the “Air transport requirements” subheading.</p>	<p>Reconsider discretion and determine if SHA will release the second paragraph on the page.</p> <p>Reconsider discretion and determine if SHA will release content under the “Assessment” header.</p>

		16(1)(a) of LA FOIP does not apply to the remainder of the page. 16(1)(b), 16(1)(c) of LA FOIP do not apply.	Release the remainder of the page.
39	16(1)(a), 16(1)(b), 16(1)(c) of LA FOIP	16(1)(a), 16(1)(b), 16(1)(c) of LA FOIP do not apply.	Release.
40	16(1)(a), 16(1)(b), 16(1)(c) 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), 16(1)(c) of LA FOIP do not apply.	Reconsider discretion and determine if SHA will release the content under the "Recommendation:" header. Release the remainder of the page.
41	16(1)(a), 16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies.	Reconsider discretion and determine if SHA will release the page.
42 to 44	Released		
45	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
46	16(1)(b), 16(1)(d) of LA FOIP	16(1)(b), 16(1)(d) of LA FOIP do not apply.	Release.
47	16(1)(a) of LA FOIP	16(1)(a) of LA FOIP applies.	Reconsider discretion and determine if SHA will release the page.
48	16(1)(a) of LA FOIP	16(1)(a) of LA FOIP applies.	Reconsider discretion and determine if SHA will release the page.
49	16(1)(a), 16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies.	Reconsider discretion and determine if SHA will release the page.
50	Released		

51	16(1)(a), 16(1)(b) of LA FOIP	16(1)(b), 16(1)(d) of LA FOIP do not apply.	Release.
52 to 53	Released		
54	16(1)(a), 16(1)(b) of LA FOIP	16(1)(b), 16(1)(d) of LA FOIP do not apply.	Release.
55 to 56	Released		
57	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a) of LA FOIP applies to the first half of the email (first sentence of the email, the two bullet points and the table). 16(1)(a) of LA FOIP does not apply to the bullet points under the table. 16(1)(b) of LA FOIP does not apply.	Reconsider discretion and determine if SHA will release the first half of the email (first sentence of the email, the two bullet points and the table). Release remainder of the page.
58	Released.		
59	16(1)(a) of LA FOIP	16(1)(a) of LA FOIP does not apply.	Release.
60	16(1)(a), 16(1)(b) of LA FOIP	16(1)(b), 16(1)(d) of LA FOIP do not apply.	Release.
61	16(1)(a), 16(1)(b) of LA FOIP	16(1)(b), 16(1)(d) of LA FOIP do not apply.	Release.
62	16(1)(a), 16(1)(b) of LA FOIP	16(1)(b), 16(1)(d) of LA FOIP do not apply.	Release.
63 to 65	Released		
66	16(1)(a) of LA FOIP	16(1)(a) of LA FOIP does not apply.	Release.
67 to 75	Released		
76	16(1)(a) of LA FOIP	16(1)(a) of LA FOIP does not apply.	Release.
77 to 108	Released		
109	16(1)(a), 16(1)(b), 16(1)(d) of LA FOIP	16(1)(a) of LA FOIP applies to the content under the "ICU Demand and Capacity" heading.	Reconsider discretion and determine if SHA will release the content under the

		16(1)(a) of LA FOIP does not apply to the remainder of the page. 16(1)(b), 16(1)(d) of LA FOIP do not apply.	“ICU Demand and Capacity” heading. Release remainder of the page.
110	16(1)(a), 16(1)(b), 16(1)(d) of LA FOIP	16(1)(a) of LA FOIP applies.	Reconsider discretion and determine if SHA will release page.
111	16(1)(a), 16(1)(b), 16(1)(d) of LA FOIP	16(1)(a) of LA FOIP applies.	Reconsider discretion and determine if SHA will release page.
112	16(1)(a), 16(1)(b), 16(1)(d) of LA FOIP	16(1)(a) of LA FOIP applies.	Reconsider discretion and determine if SHA will release page.
113	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
114 to 123	Released		
124	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
125	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
126 to 127	Released		
128	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
129	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
130	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
131	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
132 to 135	Released		
136	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.

137 to 155	21(c) of LA FOIP	21(c) of LA FOIP applies.	Reconsider discretion and determine if SHA will release pages.
156	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
157	Released		
158	Released		
159	16(1)(a) of LA FOIP	16(1)(a) of LA FOIP applies to the content under the "Recommendation" header in the email timestamped 2:53 p.m. 16(1)(a) of LA FOIP does not apply to the remainder of the page.	Reconsider discretion and determine if SHA will release the content under the "Recommendation" header in the email timestamped 2:53 p.m. Release remainder of the page.
160	16(1)(a) of LA FOIP	16(1)(a) of LA FOIP applies to the content under the "Recommendation" header in the email timestamped 2:53 p.m. (top of the page). 16(1)(a) of LA FOIP does not apply to the content under the "Background" header.	Reconsider discretion and determine if SHA will release the content under the "Recommendation" header in the email timestamped 2:53 p.m. Release remainder of the page.
161	16(1)(a) of LA FOIP	16(1)(a) of LA FOIP does not apply.	Release.
162	Released		
163	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
164	Released		
165	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
166	Released		

167	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
168 to 181	Released		
182 to 184	18(1)(b) of LA FOIP	18(1)(b) of LA FOIP does not apply.	Release.
185 to 188	Released		
189	16(1)(a) of LA FOIP	16(1)(a) of LA FOIP does not apply.	Release.
190	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
191	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a) of LA FOIP applies to the last sentence of the last redacted paragraph. 16(1)(a) of LA FOIP does not apply to the remainder of the page. 16(1)(b) of LA FOIP does not apply.	Reconsider discretion and determine if SHA will release the last sentence of the last redacted paragraph. Release remainder of the page.
192 to 196	Released		
197	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
198	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
199	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
200	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
201 to 202	Released		
203	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
204	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
205 to 208	Released		

209	16(1)(c) of LA FOIP	16(1)(c) of LA FOIP does not apply.	Release.
210	Released		
211	16(1)(c) of LA FOIP	16(1)(c) of LA FOIP does not apply.	Release.
212 to 213	Released		
214	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
215	27(a) of LA FOIP	27(a) of LA FOIP does not apply.	Release.
216	Released		
217	16(1)(a), 16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies to the bullet points in the email timestamped 9:49 p.m. 16(1)(b) of LA FOIP does not apply to the remainder of the page. 16(1)(a) of LA FOIP do not apply.	Reconsider discretion and determine if SHA will release the bullet points in the email timestamped 9:49 p.m. Release remainder of the page.
218	16(1)(a), 16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies to the question at the top of the page. 16(1)(b) of LA FOIP does not apply to the remainder of the page. 16(1)(a) of LA FOIP do not apply.	Reconsider discretion and determine if SHA will release the question at the top of the page. Release remainder of the page.
219	Released		
220	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
221	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
222	18(1)(b), 16(1)(a), 16(1)(b) of LA FOIP	16(1)(a) of LA FOIP applies to the second sentence of the third	Reconsider discretion and determine if SHA will release the

		<p>paragraph of the email timestamped 11:00 p.m.</p> <p>16(1)(a) of LA FOIP does not apply to the remainder of the page.</p> <p>16(1)(b) of LA FOIP does not apply.</p> <p>18(1)(b) of LA FOIP does not apply.</p>	<p>second sentence of the third paragraph of the email timestamped 11:00 p.m.</p> <p>Release remainder of the page.</p>
223	Released		
Package 2			
Page number	Exemption(s) applied by the SHA	IPC Findings	IPC Recommendations
1 to 14	Released		
15	16(1)(a), 16(1)(b) of LA FOIP	<p>16(1)(a) of LA FOIP applies to the email timestamped 7:50 a.m.</p> <p>16(1)(b) of LA FOIP does not apply.</p>	<p>Reconsider discretion and determine if SHA will release the contents of the email timestamped 7:50 a.m.</p> <p>Release the remainder of the page.</p>
16	16(1)(a), 16(1)(b), 16(1)(d) of LA FOIP	<p>16(1)(a) of LA FOIP applies to the first sentence and the last sentence of the email timestamped 7:35 a.m.</p> <p>16(1)(a) of LA FOIP does not apply to the remainder of the page.</p> <p>16(1)(b), 16(1)(d) of LA FOIP does not apply.</p>	<p>Reconsider discretion and determine if SHA will release the first sentence and the last sentence of the email timestamped 7:35 a.m.</p> <p>Release remainder of the page.</p>
17	16(1)(a), 16(1)(b), 16(1)(d) of LA FOIP	16(1)(a), 16(1)(b), 16(1)(d) of LA FOIP do not apply.	Release.

18 to 24	Released		
25	16(1)(a), 16(1)(b), 16(1)(d) of LA FOIP	16(1)(a), 16(1)(b), 16(1)(d) of LA FOIP do not apply.	Release.
26 to 35	Released		
36	16(1)(a), 16(1)(b), 16(1)(d) of LA FOIP	16(1)(a), 16(1)(b), 16(1)(d) of LA FOIP do not apply.	Release.
37 to 40	Released		
41	16(1)(a) of LA FOIP	16(1)(a) of LA FOIP does not apply.	Release.
42	16(1)(a) of LA FOIP	16(1)(a) of LA FOIP does not apply.	Release.
43 to 45	Released		
46	16(1)(a), 16(1)(b), 16(1)(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), 16(1)(d) of LA FOIP 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>
47	16(1)(a), 16(1)(b), 16(1)(d) of LA FOIP	<p>16(1)(a) of LA FOIP applies to the second bullet (and sub-bullet points) under the subheading “Proposed Surge Strategy”.</p> <p>16(1)(a) of LA FOIP applies to the content under the “Alternative Options” header.</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 second bullet (and sub-bullet points) under the subheading “Propose Surgery Strategy” and content under the “Alternative Options” header”.</p> <p>Release remainder of the page.</p>

		16(1)(b), 16(1)(d) of LA FOIP not apply.	
48 to 103	Released		
104	16(1)(a), 16(1)(b), 16(1)(d) of LA FOIP	16(1)(a) of LA FOIP applies.	Reconsider discretion and determine if SHA will release the page.
105 to 109	Released		
Package 3			
Page number	Exemption(s) applied by the SHA	IPC Findings	IPC Recommendations
1	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
2	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
3	Released		
4	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
5	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a), 16(1)(b) of LA FOIP do not apply.	Release.
6	Released		
7	16(1)(a), 16(1)(b) of LA FOIP	16(1)(a) of LA FOIP applies to the content under the “Recommendations” header.	Reconsider discretion and determine if SHA will release the content under the “Recommendations” header. Release remainder of the page.
8	Released		