



REVIEW REPORT 071-2017, 072-2017, and 073-2017

St. Joseph's Integrated Health Centre

August 24, 2017

Summary:

The Applicant submitted three access to information requests to St. Joseph's Integrated Health Centre (St. Joseph's). St. Joseph's responded by providing her with some records while withholding others pursuant to section 20 of LA FOIP. She was dissatisfied with St. Joseph's response so she appealed to the Information and Privacy Commissioner (IPC). The Applicant asserted that she had not received a copy of the communication books from St. Joseph's. In the course of the review, St. Joseph's provided a redacted version of the communication books. It had withheld portions of the communication books citing subsections 17(1) and 28(1) of LA FOIP as its reasons. Other portions of the communication books were redacted but St. Joseph's had not cited its reasons for withholding those particular portions. The IPC made a number of findings including how St. Joseph's did not properly apply section 20 of LA FOIP and that its practice of destroying communication books is contrary to its own policy for retaining personal health information and that it undermines individuals' rights to their personal information and personal health information. The IPC also made a number of recommendations including withholding portions of the records pursuant subsection 28(1) of LA FOIP but releasing the remainder to the Applicant. He also recommended that St. Joseph's retain communication books in accordance with its own policies and procedures regarding personal health information.

I BACKGROUND

[1] On November 3, 2016 and November 16, 2016, the Applicant submitted three access to information requests to St. Joseph's Integrated Health Centre (St. Joseph's). While all three access to information requests are related, below is a breakdown of each.

First Access to Information Request

- [2] On November 3, 2016, the Applicant submitted the first access to information request (First Request), which was for records about her mother and herself (the Applicant):

Requested please: Nurses Notes from Jan 1, 2014 – Mar 19/15 & Jan 1/16 – October 25/16

All Incident Reports Sept 2012 – October 25/16: Mars –Jan 1/16 - Oct 15, 2016

All Doctors Orders/Progress Notes All Narcotic Records. All Consultations.

All incident reports and documentation written up on [name of Applicant].

- [3] On February 27, 2017, the Applicant requested a review by my office.
- [4] In an email dated March 2, 2017 to my office, the Applicant indicated she was dissatisfied because she suspected there to be communication book entries but she had not received them.
- [5] In a letter dated March 16, 2017, St. Joseph's responded to the Applicant. The letter indicated the following:

Enclosed please find copies of the communication book pages from December 3, 2013 to October 26, 2016. The redacted areas provide information as to the reason for the redaction. LAFOIP 28(1) is used to redact personal health information of individuals other than [name of Applicant's father] or [name of Applicant's mother]. LAFOIP 17(1) is used to redact information specific to the facility but not related to [name of Applicant's father] or [name of Applicant's mother].

- [6] In an email dated March 27, 2017, the Applicant indicated she was dissatisfied with the communication book materials she had been provided.
- [7] Therefore, on April 12, 2017, my office notified both the Applicant and St. Joseph's that it would be undertaking a review.

Second Access to Information Request

- [8] On November 16, 2016, the Applicant submitted the second access to information request (Second Request). It is as follows:

I am asking for documentation written by [name of former Executive Director] on my Father.

Also documentation written by [name of former Interim Executive Director] on my Father.

[9] St. Joseph's responded to the Second Request in a letter dated January 16, 2017. It provided a letter from the former Executive Director dated June 2, 2014. It also said that there are no records responsive to her request other than the records that were released to the Applicant in 2015 from her father's chart.

[10] On February 27, 2017, the Applicant requested a review by my office. She indicated she was concerned about St. Joseph's search efforts. Further, as indicated above, the Applicant was dissatisfied with the communication book materials she had received.

[11] Therefore, on April 12, 2017, my office notified both the Applicant and St. Joseph's that it would be undertaking a review.

Third Access to Information Request

[12] Also on November 16, 2016, the Applicant submitted the third access to information request (Third Request). It is as follows:

1. I am asking for any documentation that is written upon me [name of Applicant] by anyone.
2. I am asking for incident reports written up on me.
3. I am asking for any documentation from year 2012 to October 31, 2016.

[13] St. Joseph's responded in a letter date January 16, 2017. It provided 14 records to the Applicant but refused her access to the remaining records in full pursuant to section 20 of LA FOIP. The Applicant was dissatisfied with St. Joseph's response.

[14] Therefore, on April 12, 2017, my office notified both the Applicant and St. Joseph's that it would be undertaking a review.

II RECORDS AT ISSUE

[15] There were 20 records that were withheld in full by St. Joseph's pursuant to section 20 of LA FOIP. The records include letters by staff members documenting concerns about the Applicant and incident reports involving the Applicant.

[16] Further, the communication books related to the First Request and Second Request are at issue.

III DISCUSSION OF THE ISSUES

[17] St. Joseph's is a local authority pursuant to subsection 2(f)(xiii) of LA FOIP. It is also a trustee as defined by subsection 2(t)(ii) of *The Health Information Protection Act* (HIPA).

1. Has St. Joseph's demonstrated that it conducted a reasonable search for records?

[18] Section 5 of LA FOIP provides individuals with the right of access to records as follows:

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

[19] Section 5 of LA FOIP makes it clear that access can be granted provided the records are in the possession or under the control of the local authority.

[20] Further, sections 12 and 32 of HIPA provides individuals with a right to access their own personal health information:

12 In accordance with Part V, an individual has the right to request access to personal health information about himself or herself that is contained in a record in the custody or control of a trustee.

...

32 Subject to this Part, on making a written request for access, an individual has the right to obtain access to personal health information about himself or herself that is contained in a record in the custody or control of a trustee.

[21] Also, section 56 of HIPA provides that other individuals may exercise another person's rights under HIPA. This can mean that other individuals may request access to another person's personal health information in certain cases. Section 56 of HIPA provides:

56 Any right or power conferred on an individual by this Act may be exercised:

(a) where the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate;

...

(e) where the individual does not have the capacity to give consent:

...

(ii) by a person who, pursuant to *The Health Care Directives and Substitute Health Care Decision Makers Act*, is entitled to make a health care decision, as defined in that Act, on behalf of the individual;

[22] Neither LA FOIP nor HIPA requires a local authority or trustee to show with absolute certainty that records do not exist. It must however demonstrate that it has made a reasonable effort to identify and locate responsive records.

[23] A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request. The threshold that must be met is one of "reasonableness". In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable.

[24] The level of detail that can be provided to my office is outlined in my office's resource, *IPC Guide to Exemptions*. Each case requires different search strategies and details depending on the nature of the records and the way an organization manages them.

[25] In its submission to my office, St. Joseph's indicated that it formed the following committee to search for records.

- Director of Continuing Care Services,
- Director of Staff Development & Safety,
- Executive Director for St. Joseph's,
- Interim President/CEO,
- Manager of Occupational Health and Safety,
- Manager of Quality Improvement, Privacy and Access Officer,
- VP of Primary Health and Quality Services.

[26] St. Joseph's indicated that the committee searched for responsive records in the following places:

- Staff Incident Database,
- Client Incident Database,
- Electronic records/incident reports,
- Employee records located at St. Joseph's,
- Chart documentation for [Applicant's] father and mother,
- Personal notes taken during conversations.

[27] The Applicant had contact with the Heartland Regional Health Authority (Heartland), since St. Joseph's is an affiliate of Heartland. This will be discussed later in this report. In her submission to my office, the Applicant had provided the names of some Heartland or St. Joseph's employees whom she believed would have responsive records, including the Interim President/CEO, the Director of Continuing Care, the Director of Staff Development & Safety, and Manager of Occupational Health and Safety, and Executive Director. When I compare the names provided by the Applicant and the list of the members described at paragraph [25], it appears that the individuals named by the Applicant were a part of the committee formed to search for records.

[28] St. Joseph's provided my office with the following information regarding its search efforts for each of the Applicant's three requests. Below is a summary.

First request

[29] As noted in the background, there were four parts to the Applicant's first request. St. Joseph's described how it searched for all four types of information as follows:

- 1) It searched through patients charts that were stored in a lock cabinet in the Assistant Heart Nurses' office,
- 2) All incident reports are compiled and filed by Heartland. Heartland forwarded a copy of the incident reports to St. Joseph's so that St. Joseph's can verify that it did not have any copies of incident reports that had not been forwarded to Heartland,
- 3) St. Joseph's searched through all personnel files for incident reports and documentation written up on the Applicant. This search included the Applicant's file, other staff's files, patient charts and records presented to working groups and

- on a SharePoint site for the Quality Oversight [sic] Committee that looked into concerns raised by the Applicant's family in 2015.
- 4) The Executive Director searched through his day timer, where he had recorded notes of phone messages left by the Applicant. The notes were so that he can contact the Applicant to discuss the messages.
 - 5) St. Joseph's admits it did not search for communication books in its initial search but it has made efforts to provide them to the Applicant. (Issues related to the communication books will be discussed later in the report.)

Second request

[30] As noted in the background, the Applicant's second request is for records related to her father. Below is a summary of St. Joseph's search efforts:

- 1) It searched through the patient's chart from its "old records" for any communications written by previous directors,
- 2) It searched through files on a SharePoint site for the Quality Oversight [sic] Committee that looked into concerns raised by the Applicant's family in 2015.
- 3) The Executive Director searched through the notes that were given to him when he became the Executive Director in August 2015.
- 4) The Executive Director notes that he does not have access to the email accounts of the former directors as their email accounts were closed within a certain period of time after they had left. The Executive Director notes he never had access to their email accounts.

Third request

[31] As noted in the background, the Applicant's third request is for records related to her. Below is a summary of St. Joseph's search efforts:

- 1) St. Joseph's searched through the personnel files of all staff, including the Applicant's personnel file.
- 2) It searched through discipline files, including that of the Applicants,
- 3) St. Joseph's contacted Heartland to compile the incident reports it had on file,
- 4) St. Joseph's searched through client files,
- 5) St. Joseph's searched through the communication books (again, the issue of the communication books will be discussed later in this report.).

[32] Based on the above, I find that St. Joseph's has made a reasonable effort to search for records. I recommend that St. Joseph's provide a copy of any notes from the Executive Director's day timer that relates to the Applicant.

2. Did St. Joseph's properly apply section 20 of LA FOIP?

[33] The records upon which St. Joseph's applied section 20 of LA FOIP are letters by staff members documenting concerns about the Applicant and incident reports involving the Applicant. Section 20 of LA FOIP provides:

20 A head may refuse to give access to a record if the disclosure could threaten the safety or the physical or mental health of an individual.

[34] Section 20 of LA FOIP is meant to provide the local authority with the authority to refuse access to information if its disclosure could threaten the safety, physical or mental health of an individual. In order to determine whether a threat to the safety, physical or mental health of any person exists, all three parts of the following test must be met:

- a. Is there a reasonable expectation of probable harm?
- b. Does the harm constitute damage or detriment and not mere inconvenience?
- c. Is there a causal connection between disclosure and the anticipated harm?

[35] Generally, this means that the local authority must make an assessment of the risk and determine whether there are reasonable grounds for concluding there is a danger to the health or safety of any person. That assessment must be specific to the circumstances of the case under consideration. The inconvenience, upset or unpleasantness of dealing with difficult or unreasonable people is not sufficient to trigger this section.

[36] St. Joseph's explained to my office that it applied section 20 of LA FOIP because interactions between the Applicant and staff has had a negative impact on their emotional health and that staff fear that the information will be used against them. It said that it will not release the records to protect staff from "further action". As examples of the Applicant's actions, St. Joseph's explained that the Applicant has raised concerns about the quality of care with Emmanuel Care, Heartland Health Region, and the Ministry of Health. Also, the Applicant had reported nurses to the Saskatchewan Registered Nurses' Association (SRNA). It also said that the Applicant has threatened legal action. These examples suggest that the Applicant is utilizing or contemplating lawful channels to address her concerns. Withholding information in order to protect staff from "further

action” suggests that St. Joseph’s is attempting to prevent the Applicant from effectively utilizing lawful channels available to her as a Saskatchewan citizen. This is not the purpose of section 20 of LA FOIP.

[37] To demonstrate the impact the Applicant’s behavior has had upon staff, St. Joseph’s has indicated that a staff member submitted a harassment complaint to the Ministry of Labour Relations and Workplace Safety (LRWS). She reported harassment by the Applicant. LRWS conducted an investigation into the harassment complaint. Under *The Saskatchewan Employment Act* and *The Occupational Health and Safety Regulations, 1996*, employers are required to develop and implement a harassment policy within their workplace. LRWS’s investigation concluded that St. Joseph’s, as the employer, has met the legislative requirements and it has addressed concerns raised by staff. In other words, LRWS’ investigation was not to determine whether or not the Applicant’s behavior qualifies as harassment but whether St. Joseph’s, as an employer, had sufficient measures in place required by law to prevent harassment in the workplace.

[38] Based on the above, there appears to be conflict and tension between the Applicant and staff. The unpleasantness between the Applicant and staff are not enough to trigger the use of section 20 of LA FOIP. Both the Applicant and staff are using lawful channels in efforts to have their concerns addressed.

[39] Finally, St. Joseph’s indicated to my office that a family member of the Applicant had allegedly threatened to physically injure a staff member. Such threats are not lawful. Perhaps St. Joseph’s is suggesting that the disclosure of the records may aggravate the already strained relationship between the Applicant, her family, and St. Joseph’s. However, St. Joseph’s did not provide evidence that the family member did in fact make such a threat. Evidence could have included documentation of how St. Joseph’s handled the threat. For example, a copy of a police report it may have filed in an attempt to contain the threat. Furthermore, the Applicant’s right to access records in the possession or control of St. Joseph’s should not be impaired by the alleged actions of a family member. I will consider the Applicant’s right to access her own personal information and the staff’s right to their privacy in the next section of this report when I discuss subsection 28(1) of LA FOIP.

[40] I note there are similarities between the matter discussed in this report and the matter in Review Report LA-2012-002. In that report, the applicant requested a record from Kelsey Trail Regional Health Authority (KTRHA). KTRHA refused the applicant access to the record by citing section 20 of LA FOIP because of staff's fears. My office found that section 20 of LA FOIP did not apply. That report provided as follows:

In summary, KTRHA's contention that its staff fears the Applicant is not sufficient proof that disclosure of the record could result in the harm anticipated by section 20 of LA FOIP.

...

The arguments raised by KTRHA at their strongest were not even connected to the specific access request in issue. KTRHA did not indicate who is under the threat of harm, what the harm may be or how the release of the record to the Applicant could contribute to any alleged harm.

...

Therefore, I find that KTRHA has failed to meet the burden of proof for establishing that section 20 of LA FOIP applies in this case.

[41] My office's finding was upheld by the Court of Queen's Bench in *Evenson v Kelsey Trail Regional Health Authority*, 2012 SKQB 382, which provides:

The facts, circumstances, analysis and conclusions which the Commissioner reached in his Report are the same as those that I have reached in my review of this matter de novo. I am in complete agreement with the Commissioner's Report.

[42] Based on the above, I find that section 20 of LA FOIP is not properly applied. I will proceed to discuss the Applicant's right to her own personal information and the staff's right to their privacy.

3. Does subsection 28(1) of LA FOIP apply to the records?

[43] St. Joseph's did not apply subsection 28(1) of LA FOIP to the 20 records discussed in issue #2 above. However, I must consider whether subsection 28(1) of LA FOIP applies to the records because it is treated as a mandatory exemption – a local authority must not disclose personal information in its possession or under its control unless there is proper authority to do so.

[44] When determining whether subsection 28(1) of LA FOIP applies, it must be determined that the information indeed qualifies as personal information pursuant to subsection 23(1) of LA FOIP. A part of that determination is considering the following two questions:

- a. Is there an identifiable individual?
- b. Is the information personal in nature?

[45] If the information is identified as personal information, the local authority needs to consider subsection 28(1) of LA FOIP which provides:

28(1) No local authority shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 29.

[46] The contents of the records include observations of the Applicant in the workplace, descriptions of interactions that staff members had with the Applicant, opinions about the Applicant, and information about the authors of each record. Below is an analysis of whether the records contain personal information.

a. Observations of the Applicant in the workplace

[47] Subsection 23(2)(a) of LA FOIP provides that information about the employment responsibility of an individual of an employee of a local authority does not qualify as “personal information”. It provides:

23(2) “Personal information” does not include information that discloses:

- (a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a local authority;

[48] The Applicant was an employee of St. Joseph’s. Therefore, I find that the information about the observations of the Applicant in the workplace is neither the personal information of the author of the letter nor of the Applicant. It is work product, which is

information generated by or otherwise associated with an individual in the normal course of performing her professional or employment responsibilities.

b. Descriptions of interactions that staff members had with the Applicant

[49] Similar to observations of the Applicant in the workplace, I find that descriptions of interactions that staff members had with the Applicant in the workplace is work product and cannot be considered “personal information” of either the Applicant or the staff member according to subsection 23(2)(a) of LA FOIP.

c. Opinions about the Applicant

[50] The records contain staff member’s opinions about the Applicant. Subsection 23(2)(b) of LA FOIP provides that an employee’s personal views or opinions given in the course of employment does not qualify as personal information except when the views or opinions are about another individual. Subsection 23(2)(b) of LA FOIP provides:

23(2) “Personal information” does not include information that discloses:

...

(b) the personal opinions or views of an individual employed by a local authority given in the course of employment, other than personal opinions or views with respect to another individual;

[51] When the opinion is about another individual, then that information qualifies as the personal information of that other individual, pursuant to subsection 23(1)(h) of LA FOIP:

23(1) Subject to subsections (1.1) and (2), “personal information” means personal information about an identifiable individual that is recorded in any form, and includes:

...

(h) the views or opinions of another individual with respect to the individual;

[52] I find that the opinions in the records about the Applicant qualify as the personal information about the Applicant.

d. Information about the authors of the records

[53] I note that in some portions of the records at issue, the authors of the letters included information about themselves, including their work history and descriptions of impacts of this workplace issue has had upon them personally. The definition of personal information in subsection 23(1) includes the following:

23(1) Subject to subsections (1.1) and (2), “personal information” means personal information about an identifiable individual that is recorded in any form, and includes:

...

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) information that relates to health care that has been received by the individual or to the health history of the individual;

...

(f) the personal opinions or views of the individual except where they are about another individual;

[54] I find that such information qualifies as personal information of the authors (not the Applicant) as defined by subsection 23(1) of LA FOIP. As such, I recommend that St. Joseph’s withhold these particular portions pursuant to subsection 28(1) of LA FOIP.

e. Name and handwriting of the authors of the letters

[55] Many of the records are handwritten letters by staff members. Many of the staff members signed their names at the end of their letters.

[56] Subsection 23(1)(k) of LA FOIP provides as follows:

23(1)(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

[57] In past Review Reports, my office has found that the name of an employee of a local authority in and of itself does not qualify as personal information. Such information is “business card information” and does not reveal information that is personal in nature. In this case, in order for the name of the author of each letter to be considered “personal information” as defined by subsection 23(1)(k) of LA FOIP, I must determine if the name appears with other personal information that relates to the individual or if the disclosure of the name of the employee would reveal personal information about the author of each letter.

[58] In its submission, St. Joseph’s asserts that the staff had an expectation of confidentiality when they were instructed to document their concerns. In other words, they submitted their letters to the former Executive Director (or the current Executive Director) implicitly in confidence. I note that subsection 23(1)(g) of LA FOIP defines personal information as correspondence that is submitted to a local authority implicitly or explicitly in confidence except where the correspondence contains the views or opinions of the individual with respect to another individual:

23(1) Subject to subsections (1.1) and (2), “personal information” means personal information about an identifiable individual that is recorded in any form, and includes:

...

(g) correspondence sent to a local authority by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, **except** where the correspondence contains the views or opinions of the individual with respect to another individual;

[emphasis added]

[59] Therefore, subsection 23(1)(g) of LA FOIP suggests that even though staff had allegedly submitted the letters to the former Executive Director (or current Executive Director) implicitly in confidence, a great portion of the letters is about the Applicant and not the author of each letter. Earlier, I recommended that St. Joseph’s withhold some portions of

the letters that qualify as personal information of the author of each letter. Once those particular portions of the letters are withheld pursuant to subsection 28(1) of LA FOIP, I find that disclosing the name of each author will not reveal personal information of the author as defined by subsection 23(1) of LA FOIP.

[60] I note that in Report 95-1 by former Information and Privacy Commissioner Derril McLeod, Q.C. said that it is a reasonable expectation that the person about whom a complaint has been made would be entitled to know who was complaining and the nature of the complaint:

...when a complaint is made by an individual about another individual it would appear that the complainant has no reasonable expectation that the matter will be held confidential. Indeed, it is the expectation of the complainant that the matter will be investigated, and in those circumstances a reasonable expectation is that the person about whom the complaint has been made would be entitled to know who was complaining and the nature of the complaint.

[61] As such, once the personal information about the authors within the records are withheld pursuant to subsection 28(1) of LA FOIP, I find that the names no longer qualify as personal information as defined by subsection 23(1)(k) of LA FOIP. I recommend that St. Joseph's disclose the name of each author.

[62] The style of the handwriting can reveal the identity of the author of each letter. Since the name of the author of each letter itself is not caught by the definition of personal information in subsection 23(1), then I find that St. Joseph's cannot withhold the identity of the author of each letter by withholding the style of handwriting under subsection 28(1) of LA FOIP.

[63] Based on the above analysis, I find that a great portion of the information in the records do not qualify as personal information at all or qualifies as the Applicant's personal information. I find that some portions qualify as personal information of the authors.

[64] Since section 5 of LA FOIP provides the Applicant with a right to access her own personal information in the possession or control of a local authority, and since I have already found that St. Joseph's did not properly apply section 20 of LA FOIP to the

records, I recommend that St. Joseph's withhold the portions of the records that qualifies as personal information of the authors pursuant to subsection 28(1) of LA FOIP but disclose the remainder of the records.

[65] I anticipate that my office's findings and recommendations will distress employees since they were told that letters would be submitted in confidence to the former Executive Director (or the current Executive Director). Employees should have been cautioned that letters submitted to the former Executive Director (or the current Executive Director) would not be subject to absolute confidentiality. This is because St. Joseph's is a local authority under LA FOIP and a trustee under HIPA. As such, St. Joseph's can only withhold information pursuant to LA FOIP and HIPA. Explaining this to employees would help employees decide what information (and in what manner) he or she wished to submit information.

4. Does St. Joseph's practice of disposing of the communication books undermine individuals' rights to access their own personal health information under HIPA?

[66] Sections 12 and 32 of HIPA provide individuals with a right to access to their own personal health information under HIPA.

[67] In response to the Applicant's First Request, St. Joseph's provided the Applicant with a copy of the communication books. Even though these communication books contain both personal information and personal health information, it appears that St. Joseph's considered only LA FOIP (and not HIPA) when processing the Applicant's First Request. The Applicant reviewed the copy of the communication books and noted that some parts were severed, portions were marked with subsections 17(1) or 28(1) of LA FOIP, while other severed portions did not have such markings. In its submission and according to an email dated July 10, 2017, St. Joseph's indicated many pages were redacted in response to a request for records by the SRNA. The SRNA had requested a copy of one of the two communication books for an investigation.

[68] According to its submission, St. Joseph's only kept the redacted copy of the communication book it had provided to the SRNA and destroyed the original. Then, it received the First Request from the Applicant. As a result of destroying the original communication book, it could only use the redacted copy of the communication book to process the Applicant's request.

[69] In an email dated July 10, 2017, St. Joseph's explained that its practice was that once communication books were full, they would be disposed of and a new communication book would be started. It noted that it began using the second communication book on May 3, 2016. It believes that the first one was destroyed once it had forwarded information to the SRNA on June 14, 2016.

[70] If St. Joseph's practice is to dispose of a communication book when it is full, and if the second communication book was started at the beginning of May 2016, then the first communication book would have been disposed of at the beginning of May 2016. However, this was not the case. The first communication book was apparently disposed of in June 2016. It is questionable what St. Joseph's practice is when it comes to disposing of communication books and what the circumstances are surrounding the disposition of the first communication book. My office requested documentation, such as a certificate of destruction, for the communication book but St. Joseph's was unable to provide my office with such documentation.

[71] In its submission, St. Joseph's asserted it did not believe that the information in the communication books qualify as personal health information. Therefore, it did not manage the communication books in accordance with its policies for retaining and destruction policies and procedures of personal health information - *Retention and Destruction of Records Containing Personal Health Information (Interim Guidelines)* and *Retention/Destruction of Records*. The latter policy provides that all patient, client, or resident records shall be retained from the date of collection or creation of the record for either 10 years or the age of majority plus one year for a minor, whichever is longer.

[72] Based on a review of the redacted copy of the redacted first communication book and a copy of the second communication book, I find that the type of information that is

recorded in the communication books qualifies as personal health information as defined by subsection 2(m) of HIPA:

2 In this Act:

...

(m) “personal health information” means, with respect to an individual, whether living or deceased:

(i) information with respect to the physical or mental health of the individual;

(ii) information with respect to any health service provided to the individual;

...

(iv) information that is collected:

(A) in the course of providing health services to the individual; or

(B) incidentally to the provision of health services to the individual; or

(v) registration information;

[73] St. Joseph’s should have retained the original communication book pursuant to its retention and destruction policies for personal health information. That is, it should retain the communication books for either 10 years or the age of majority plus one year for a minor, whichever is longer. It should not be disposing of communication books just because they are “full”. I find St. Joseph’s practice of disposing of communication books when they are full is contrary to its own policy for retaining personal health information.

[74] I find St. Joseph’s practice of disposing of a communication book after it is full undermines an individual’s right to gain access to his or her own personal health information under HIPA. As quoted earlier, sections 12 and 32 of HIPA provides individuals with a right to access their own personal health information.

[75] Section 56 of HIPA provides that other individuals may exercise another person’s rights under HIPA. That may include requesting the other person’s personal health information. In this case, since the Applicant’s mother and father are deceased, then St. Joseph’s should be verifying that the Applicant has authority under subsection 56(a) of HIPA to request her mother and father’s personal health information. Subsection 56(a) of HIPA provides:

56 Any right or power conferred on an individual by this Act may be exercised:

(a) where the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate;

[76] If the Applicant does not have authority pursuant to subsection 56(a) of HIPA to request the personal health information of the Applicant's mother or father, then St. Joseph's should decide whether it could disclose personal health information pursuant to subsection 27(4)(e)(ii) of HIPA, which provides:

27(4) A trustee may disclose personal health information in the custody or control of the trustee without the consent of the subject individual in the following cases:

...
(e) if the subject individual is deceased:

...
(ii) where the information relates to circumstances surrounding the death of the subject individual or services recently received by the subject individual, and the disclosure:

(A) is made to a member of the subject individual's immediate family or to anyone else with whom the subject individual had a close personal relationship; and

(B) is made in accordance with established policies and procedures of the trustee, or where the trustee is a health professional, made in accordance with the ethical practices of that profession;

5. Does St. Joseph's practice of disposing of the communication books undermine individuals' rights to access their own personal information under LA FOIP?

[77] Section 5 of LA FOIP provides individuals with a right to access to their own personal information under LA FOIP. As mentioned earlier, some of the information in the communication books qualifies as personal information as defined by subsection 23(1) of LA FOIP. Therefore, I find that St. Joseph's practice of disposing of a communication book soon after it is full undermines an individual's right to gain access to his or her own personal information under section 5 of LA FOIP.

[78] St. Joseph's should have record retention and disposition schedules not only for personal health information but also for personal information in its possession or control.

6. Does St. Joseph's practice of disposing of the communication books undermine my office's ability to conduct a review?

[79] Part VI of LA FOIP and Part VI of HIPA provides my office with the ability to conduct a review. When an applicant has been refused access to information, he or she may request a review by my office. My office will request from the local authority and/or trustee a copy of the non-redacted copy of the records. Then it will review the non-redacted copy of the records and consider the exemption(s) that the local authority and/or trustee applied. Each exemption has criteria that need to be met before my office can find that the exemption was properly applied and that the information was properly withheld. If the criteria are not met, then my office has the ability to recommend that the local authority and/or trustee disclose the information.

[80] In this case, as described earlier, some parts of the copies of the communication books that the Applicant received were severed and marked with subsections 17(1) and 28(1) of LA FOIP. Other portions were severed but were not marked with any subsections of LA FOIP (or HIPA).

[81] Unfortunately, my office is unable to review whether or not St. Joseph's properly redacted parts of the first communication book under LA FOIP or HIPA because the original communication book has been destroyed. I find that St. Joseph's practice of disposing of communication books after it is full undermines my office's ability to conduct a complete and comprehensive review of the records at issue.

7. Did St. Joseph's properly apply subsections 17(1) and 28(1) of LA FOIP to the communication books?

[82] My office reviewed what was left of the first communication book and the second communication book. St. Joseph's had applied subsections 17(1) and 28(1) of LA FOIP. Below is my office's analysis of the application of these two exemptions.

a. Subsection 17(1) of LA FOIP

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

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

- (a) trade secrets;
- (b) financial, commercial, scientific, technical or other information:
 - (i) in which the local authority has a proprietary interest or a right of use; and
 - (ii) that has monetary value or is reasonably likely to have monetary value;
- (c) scientific or technical information obtained through research by an employee of the local authority, the disclosure of which could reasonably be expected to deprive the employee of priority of publication;
- (d) information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the local authority;
- (e) 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;
- (f) information, the disclosure of which could reasonably be expected to prejudice the economic interest of the local authority; or
- (g) information, the disclosure of which could reasonably be expected to result in an undue benefit or loss to a person.

[84] St. Joseph's did not specify which particular subsection of 17(1) of LA FOIP it was relying upon to withhold information. Based on a review of the communication books, St. Joseph's applied subsection 17(1) of LA FOIP to withhold the security code to enter into the staff lounge. While I find that such information is appropriately withheld, St. Joseph's should have considered withholding this information pursuant to subsection 14(1)(m) of LA FOIP, which provides:

- 14(1) A head may refuse to give access to a record, the release of which could:
- ...
 - (m) reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems.

[85] St. Joseph's also applied subsection 17(1) of LA FOIP to names of other patients. I also find that while such information is appropriately withheld, St. Joseph's should have considered withholding this information pursuant to subsection 28(1) of LA FOIP. This will be discussed next.

[86] Citing the most appropriate exemption is important so that while information is withheld from the Applicant, the Applicant would at least know the type of information that is being withheld based on the exemption.

b. Subsection 28(1) of LA FOIP

[87] As already set out in issue #3, when determining whether subsection 28(1) of LA FOIP applies, it must be confirmed that the information indeed qualifies as personal information pursuant to subsection 23(1) of LA FOIP. A part of that determination is considering the following two questions:

- a. Is there an identifiable individual?
- b. Is the information personal in nature?

[88] If the information is identified as personal information, the local authority needs to consider subsection 28(1) of LA FOIP which provides:

28(1) No local authority shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 29.

[89] Also, as noted earlier, I find that some information in the communication books qualifies as personal information. This includes the Applicant's own personal information (the Applicant is/was not a patient). Such information would qualify as personal information as defined by subsection 23(1) of LA FOIP. If the personal information does not belong to the Applicant, then it should be withheld pursuant to subsection 28(1) of LA FOIP. If the personal information belongs to the Applicant, then it should be released.

c. Subsection 27(1) of HIPA

[90] The definition of personal health information is found in subsection 2(m) of HIPA, which is as follows:

2 In this Act:

...

m) “personal health information” means, with respect to an individual, whether living or deceased:

- (i) information with respect to the physical or mental health of the individual;
- (ii) information with respect to any health service provided to the individual;
- (iii) information with respect to the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;
- (iv) information that is collected:
 - (A) in the course of providing health services to the individual; or
 - (B) incidentally to the provision of health services to the individual; or
- (v) registration information;

[91] If information qualifies as “personal health information” as defined by subsection 2(m) of HIPA, then the trustee should consider whether it should withhold it pursuant to subsection 27(1) of HIPA. Subsection 27(1) of HIPA provides:

27(1) A trustee shall not disclose personal health information in the custody or control of the trustee except with the consent of the subject individual or in accordance with this section, section 28 or section 29.

[92] The communication books contain the personal health information of individuals that is not about the Applicant or about the Applicant’s mother or father. While I note that St. Joseph’s withheld such information from the Applicant, it should have withheld it pursuant to subsection 27(1) of HIPA, not subsection 28(1) of LA FOIP.

8. Does St. Joseph’s have an agreement with Heartland so that Heartland can provide access and privacy services for St. Joseph’s?

[93] Heartland’s Privacy and Access Officer was involved in processing two of the three access requests from the Applicant. However, in an email dated March 14, 2017 to my office, Heartland’s Privacy and Access Officer noted that the redactions to the communication books were done without her knowledge or input.

[94] As noted earlier, St. Joseph's is an affiliate of Heartland. Unfortunately, there is no agreement in place that outlines that relationship between St. Joseph's and Heartland. My office was provided with a copy of the *Principles and Services Agreement* between St. Joseph's and Heartland but it does not detail how Heartland's Privacy and Access Officer is to provide access and privacy services for St. Joseph's. Further, the *Principles and Services Agreement* expired on March 31, 2017 and a new agreement has not been made. I find that St. Joseph's does not have an agreement with Heartland so that Heartland can provide access and privacy services for St. Joseph's.

[95] For consistency in responding to requests to access personal health information or personal information, I recommend that St. Joseph's either appoint its own Privacy and Access Officer or establish an agreement between it and Heartland (or the new Provincial Health Authority) so that Heartland (or the new Provincial Health Authority) provides privacy and access services for St. Joseph's. Such an agreement should outline the relationship between St. Joseph's and Heartland (or the new Provincial Health Authority) in terms of access and privacy services. The agreement should include the following topics:

- Trusteeship of personal health information
- Custody/Control of personal health information and personal information
- Appointment of the Privacy and Access Officer(s)
- The role and responsibilities of the Privacy and Access Officers
- Policies and procedures related to HIPA and LA FOIP, including the managing requests for access to personal health information/personal information, investigations into privacy breaches, auditing, and education/awareness initiatives for employees.

[96] Whether St. Joseph's appoints its own Privacy and Access Officer or establishes an agreement with Heartland (or the new Provincial Health Authority), St. Joseph's must ensure that it is responding to access to information requests in accordance with LA FOIP and HIPA. This should include having relevant policies and procedures that guides employees to conduct and document reasonable searches for records, to review and apply exemptions where appropriate, and to sever neatly and prepare records to be sent to the Applicant. These policies and procedures should also ensure appropriate records management practices so that records are retained and disposed of appropriately. Personal

health information should be managed in accordance with St. Joseph's policies referenced earlier, *Retention and Destruction of Records Containing Personal Health Information (Interim Guidelines)* and *Retention/Destruction of Records*. Further, the original records that are subject to an access to information request should be retained for at least one year from the time St. Joseph's responds to a request. This is because applicants have one year from the time a local authority or trustee responds to an applicant's request pursuant to section 7 of LA FOIP or section 36 of HIPA to appeal to my office.

IV FINDINGS

[97] I find that St. Joseph's has made a reasonable effort to search for records.

[98] I find that St. Joseph's has not properly applied section 20 of LA FOIP.

[99] I find that information about the observations of the Applicant in the workplace and descriptions of interactions that staff members had with the Applicant in the workplace is work product and does not qualify as "personal information" as defined by subsection 23(1) of LA FOIP and cannot be withheld under subsection 28(1) of LA FOIP.

[100] I find that descriptions of interactions that staff members had with the Applicant is not "personal information" as defined by subsection 23(1) of LA FOIP and cannot be withheld under subsection 28(1) of LA FOIP.

[101] I find that the opinions in the records about the Applicant qualify as personal information of the Applicant as defined by subsection 23(1) of LA FOIP and cannot be withheld under subsection 28(1) of LA FOIP.

[102] I find that information about the authors of the records qualifies as personal information of the authors (not the Applicant) as defined by subsection 23(1) of LA FOIP.

- [103] I find that once personal information about the authors are withheld pursuant to subsection 28(1) of LA FOIP, I find that disclosing the name of each author will not reveal personal information of the author as defined by subsection 23(1) of LA FOIP.
- [104] I find that St. Joseph's cannot withhold the identity of the author of each letter by withholding the style of handwriting under subsection 28(1) of LA FOIP.
- [105] I find that the type of information that is recorded in the communication books qualifies as personal health information as defined by subsection 2(m) of HIPA.
- [106] I find that some of the information contained within the communication books qualifies as personal health information of the Applicant's mother and father.
- [107] I find St. Joseph's practice of disposing of communication books when they are full is contrary to its own policy for retaining personal health information.
- [108] I find St. Joseph's practice of disposing of a communication book after it is full undermines an individual's right to gain access to his or her own personal health information under HIPA.
- [109] I find that some of the information in the communication books qualifies as personal information about the Applicant as defined by subsection 23(1) of LA FOIP.
- [110] I find that St. Joseph's practice of disposing of a communication book after it is full undermines an individual's right to gain access to his or her own personal information under section 5 of LA FOIP.
- [111] I find that St. Joseph's practice of disposing of a communication book after it is full undermines my office's ability to conduct a complete and comprehensive review of the records at issue.

[112] I find that St. Joseph's should withhold information such as security codes pursuant to subsection 14(1)(m) of LA FOIP instead of subsection 17(1)(b) of LA FOIP.

[113] I find that St. Joseph's should withhold personal health information pursuant to subsection 27(1) of HIPA, and not subsection 28(1) of LA FOIP.

[114] I find that St. Joseph's does not have an agreement with Heartland so that Heartland can provide access and privacy services for St. Joseph's.

V RECOMMENDATIONS

[115] I recommend that St. Joseph's provide a copy of any notes from the Executive Director's day timer that relates to the Applicant.

[116] I recommend that St. Joseph's withhold the portions of the records that qualifies as personal information of the authors pursuant to subsection 28(1) of LA FOIP but that St. Joseph's disclose the remainder of the records at issue.

[117] I recommend that St. Joseph's retain communication books in accordance with its own policies and procedures *Retention and Destruction of Records Containing Personal Health Information (Interim Guidelines) and Retention/Destruction of Records*.

[118] I recommend that St. Joseph's establish records retention and disposition schedules for personal information in its possession or control.

[119] I recommend that St. Joseph's ensure that it is responding to access to information requests in accordance with LA FOIP and HIPA by having appropriate policies and procedures in place.

Dated at Regina, in the Province of Saskatchewan, this 24th day of August, 2017.

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