

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 086/2014

Prince Albert Parkland Regional Health Authority

Summary: The Applicant made an access to information request to Prince Albert Parkland Regional Health Authority (PAPRHA) for information relating to an alleged assault. PAPRHA withheld portions of the records pursuant to subsection 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found some of the information did not qualify as personal information and recommended release. He also recommended release of the name of an employee who was disciplined pursuant to subsection 10(g)(i) of the LA FOIP Regulations.

I BACKGROUND

[1] The applicant, who is acting on behalf of his father, made a request to Prince Albert Parkland Regional Health Authority (PAPRHA) for information regarding an incident involving an alleged assault on his father while in the care of the PAPRHA. PAPRHA responded by releasing parts of the responsive record and withholding others pursuant to subsections 14(1)(c) and (d), 18(1)(b) and 23(1)(b), (h) and (k) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The applicant made a request for review to my office.

[2] On September 12, 2014, my office provided notification to both the applicant and PAPRHA of our intention to undertake a review. We asked PAPRHA for a submission supporting the use of the above noted exemptions. Through negotiations with our office, PAPRHA has released the majority of the responsive record to the applicant with the exception of the name of an employee who was disciplined and names of witnesses.

Further, other information was severed as PAPERHA believed it qualified as personal information.

II RECORDS AT ISSUE

[3] The responsive record consists of a two paged incident report, 15 pages of handwritten interview and meeting notes and a one page letter of discipline. The names of the employee who was disciplined and witnesses were severed throughout the record and it was the only items severed through the handwritten notes. On the incident report, PAPERHA is arguing that two items are employment history of an individual pursuant to subsection 23(1)(b) of LA FOIP and two items qualify as views and opinions of an individual pursuant to subsection 23(1)(h) of LA FOIP. In the letter of discipline, PAPERHA severed one item as it believes it qualifies as personal information pursuant to subsection 23(1)(b) of LA FOIP.

III DISCUSSION OF THE ISSUES

[4] PAPERHA qualifies as a local authority pursuant to subsection 2(f)(xiii) of LA FOIP.

1. Does the severed material qualify as personal information?

[5] Subsection 28(1) of LA FOIP states the following:

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.

[6] LA FOIP does not permit PAPERHA to disclose personal information. Therefore, I must determine if the withheld portions of the record qualify as personal information.

i. Name of the disciplined employee

[7] Subsections 23(1)(b) and (k) state 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;

...

(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.

[8] PAPRHA has indicated that the records in question contain details about the actions and eventual discipline of an employee. As such, it would qualify as personal information as it relates to the employment history of an individual pursuant to subsection 23(1)(b) of LA FOIP. I agree.

[9] PAPRHA, however, has disclosed most of the personal information to the applicant. It is withholding the name of the employee who was disciplined pursuant to section 23(1)(k). Subsections 28(1) and 23(1)(k) of LA FOIP justifies this action.

ii. Employment history of the employee who was disciplined

[10] In the letter of discipline, along with the employee’s name, PAPRHA severed only the dates of the suspension for the disciplined employee. PAPRHA indicated that the dates would constitute employment history, and in turn personal information, of the disciplined employee and must be withheld. The letter included other details about the discipline of the employee which would also qualify as personal information. PAPRHA has decided to withhold the name of the employee who was disciplined and release other personal information as it is de-identified. It is unclear why PAPRHA would treat these dates any differently. Therefore, these dates should be disclosed.

iii. Names of the witnesses

[11] PAPERHA has not identified what it is relying on to withhold the names of the witnesses from the applicant. However, it has indicated that the witnesses' names "have been redacted because disclosure of this information could allow for the applicant to determine the name of the employee who was disciplined." PAPERHA has not explained how it has come to that conclusion. PAPERHA has also indicated that "[i]f the recommendation by your office is to release those names, then we would consider that."

[12] I see no reason why the names of the witnesses could not be released to the applicant. The remainder of the notes contain observations regarding an incident that occurred in the workplace. This would not qualify as personal information. There are also opinions about the employee who was disciplined. This would qualify as the personal information of the employee that was disciplined pursuant to subsection 23(1)(h), not the witnesses. The name of the employee that was disciplined has been severed. Therefore the opinions about this person can be released to the applicant.

iv. Employment history of the witness

[13] On the first page of the incident report, PAPERHA severed one of the witnesses' job status and the length of time she has worked in the department. It argued that this would constitute the employment history and therefore personal information of the witness pursuant to section 23(1)(b) of LA FOIP. I agree and PAPERHA should continue to withhold this information.

v. Views and opinions of an individual

[14] Subsection 23(1)(h) of LA FOIP states:

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;

[15] PAPRHA has also severed one line and a paragraph on the incident report. It has severed this material because it believes it is view or opinion of an individual pursuant to subsection 23(1)(h) of LA FOIP.

[16] The one line in the incident report is an opinion that does not appear to be specific to any individual. It appears to be a general opinion about preventing similar occurrences. Therefore, it would not qualify as personal information and should be released.

[17] The paragraph severed from the incident report gives the witness' reasons for reporting this incident as well as opinions about the employee that was disciplined. The reasons for reporting the incident would be work product and not personal information as the witnesses are also employees of PAPRHA. As noted above, the opinions about the employee who was disciplined can also be released as the name of this person has not been released.

2. Can PAPRHA use its discretion to release the name of the employee who was disciplined?

[18] Subsection 28(2)(s) of LA FOIP states:

(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

...

(s) as prescribed in the regulations.

[19] Subsection 10(g)(i) of the LA FOIP regulations states the following:

10 For the purposes of clause 28(2)(s) of the Act, personal information may be disclosed:

...

(g) to any person where the information pertains to:

(i) the performance of any function or duty or the carrying out of any responsibility by an officer or employee of a local authority; or

[20] In my view, disclosing the name of the employee who was disciplined to the applicant, along with the personal information that has already been released, would be justified under section 10(g)(i) of the LA FOIP Regulations. However, this subsection is discretionary. In other words, the head of PAPRHA can choose to do this or not.

IV FINDINGS

[21] The name of the employee who was disciplined would qualify as personal information pursuant to subsection 23(1)(k) of LA FOIP.

[22] The names of the witnesses would not qualify as personal information.

[23] The job status of the witness and the length of time worked severed from the first page of the incident report would qualify as personal information pursuant to section 23(1)(b) of LA FOIP.

V RECOMMENDATIONS

[24] I recommend that if PAPRHA withholds the name of the employee who was disciplined, it release all other personal information of this individual found in the responsive record.

[25] I recommend that PAPRHA release the names of the witnesses and withhold all personal information of these individuals found in the responsive record.

[26] I recommend that PAPRHA consider using its discretion to release the name of the employee who was disciplined to the applicant pursuant to section 10(g)(i) of the LA FOIP Regulations.

Dated at Regina, in the Province of Saskatchewan, this 22nd day of January, 2015.

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