



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 164-2016

University of Saskatchewan

August 4, 2016

Summary: The Applicant made an access request for material related to his application to medical residency programs at the University of Saskatchewan. The University applied subsection 17(1)(g), 28(1), 30(2) and 30(3)(a)(ii) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the record. The Commissioner found that subsections 17(1)(g), 28(1), and 30(3)(a)(ii) of LA FOIP only applied to some material and recommended release of the rest.

I BACKGROUND

- [1] On May 16, 2016, the University of Saskatchewan received a request from the Applicant for all information related to the assessment, evaluation and ranking as an Applicant for residency positions.
- [2] On June 24, 2016, the University released certain documents to the Applicant but severed some information pursuant to sections 17 and 30 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). On the same day, the Applicant requested a review by my office.
- [3] On June 28, 2016, my office provided notification to both the University and my office of our intention to undertake the review.

II RECORDS AT ISSUE

[4] The following is a list of documents responsive to the Applicant’s request and the exemptions applied. There are 35 pages in total.

# of Pages	Tab	Description	Exemption(s)
3	2	E-mail and appointment list for 2015 Radiology applicants	17(1)(g), 28(1)
2	3	E-mail and list for 2015 Psychiatry applicants	17(1)(g), 28(1)
3	4	E-mail and list for 2015 Psychiatry applicants	17(1)(g), 28(1), 30(2), 30(3)(a)(ii)
1	5	Review Checklist for Applicant - Psychiatry	17(1)(g), 30(2), 30(3)(a)(ii)
1	6	Psychiatry interview offer list 1 st round	28(1)
10	7-9	Psychiatry Review Checklists (only 5 pages relate to the Applicant)	17(1)(g), 28(1), 30(2), 30(3)(a)(ii)
6	-	Documents submitted by Applicant	None
3	10	Letters of reference	30(2), 30(3)(a)(ii)
1	-	Documents submitted by Applicant	None
2	11	Psychiatry First Round Interview Offer List	28(1)
3	12	Psychiatry Second Round Review checklists (only 5 pages relate to the Applicant)	17(1)(g), 28(1), 30(2), 30(3)(a)(ii)

III DISCUSSION OF THE ISSUES

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

[5] The University applied subsection 28(1) of LA FOIP to many parts of the record.

[6] When dealing with information in a record that appears to be personal information, the first step is to confirm the information indeed qualifies as personal information pursuant to section 23 of LA FOIP. Once identified as personal information, a decision needs to be made as to whether to release it or not pursuant to section 28 of LA FOIP.

[7] Upon review of the record, the majority of the information to which the University has applied subsection 28(1) of LA FOIP would qualify as personal information of individuals other than the Applicant pursuant to section 23 of LA FOIP. This primarily includes the names, education history and reviewer scores of applicants to the University's residency programs. These also include lists of potential residents ranked in the order of suitability for the programs. This information would qualify as personal information pursuant to subsections 23(1)(b) and (k) of LA FOIP as follows:

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] Subsection 28(1) of LA FOIP states:

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.

[9] However, there is one sentence which appears in two places that I find does not qualify as personal information pursuant to section 23 of LA FOIP. The sentence appears on two lists as follows: “Discuss with [name of individual] before offering interview”. The University severed only the name of the individual. Presumably, this individual works for the University and has some decision making authority with respect to selecting residents for the program. As such, this would qualify as work product which is information generated by or otherwise associated with an individual in the normal course of performing his or her professional or employment responsibilities, whether in a public

or private setting. In the past, my office has not found work product to be personal information. The University should release this individual's name to the Applicant.

2. Does subsection 30(3)(a)(ii) of LA FOIP apply to the record?

[10] The University has withheld many portions of the record pursuant to subsection 30(3)(a)(ii) of LA FOIP. This includes reference letters submitted on behalf of the Applicant and scores and notes made by the individuals reviewing the Applicant's applications for residency positions.

[11] Subsection 30(3)(a)(ii) of LAFOIP states:

30(3) The head of the University of Saskatchewan or the University of Regina may refuse to disclose to an individual personal information that is evaluative or opinion material compiled solely for the purpose of:

(a) determining the individual's suitability for:

...

(ii) admission to an academic program; or

[12] My office has not considered this exemption before. The purpose and the intent of this subsection is to allow individuals to provide frank feedback when there is an evaluative process. In order to qualify for this exemption, the following criteria would have to be met:

1. The information must be personal information that is evaluative or opinion material.
2. The personal information must be compiled solely for the purpose of determining the individual's suitability admission to an academic program.
3. The personal information must have been provided explicitly or implicitly in confidence.

1. Is it personal information that is evaluative or opinion material?

[13] My office has defined opinion material as a belief or assessment based on grounds short of proof; a view held as probable for example, a belief that a person would be suitable for an academic position based on education and employment history. An opinion is subjective in nature, and may or may not be based on facts. Evaluative means to have assessed, appraised, to have found or to have stated the number of.

[14] Upon review of the record, it is apparent that all of the information in question qualifies as evaluative or opinion material. The first test has been met.

2. Was the personal information compiled solely for the purpose of determining the individual's suitability admission to an academic program?

[15] Based on my review of the record and the University's submission, I am satisfied that all of the information in question was compiled solely for the purpose of determining the Applicant's suitability in residency programs at the University. The second test has been met.

3. Was the personal information provided explicitly or implicitly in confidence?

[16] With respect to the letters of recommendation, the author of each one of the letters has included an explicit statement of confidentiality before providing it to the University. The third test has been met and subsection 30(3)(a)(ii) of LA FOIP applies to the letters of reference.

[17] Turning to the scores and notes made by the individuals reviewing the Applicant's applications for residency positions, the University noted that "[f]aculty members participate in the CaRMS application review process with the expectation that their contributions are confidential...The information is not shared among the reviewers or elsewhere. It is important that this process remain confidential in order to foster both participation in the review process and candid evaluation." I am satisfied that the information was provided implicitly in confidence.

[18] Subsection 30(3)(a)(ii) of LA FOIP applies to the record. There is no need to consider subsection 30(2) of LA FOIP.

3. Does subsection 17(1)(g) of LA FOIP apply to the record?

[19] Subsection 17(1)(g) of LA FOIP states:

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

...

(g) information, the disclosure of which could reasonably be expected to result in an undue benefit or loss to a person.

[20] This provision is meant to prevent undue benefit or loss to a person if particular records were disclosed. A person includes an individual, a corporation, a partnership and the legal representatives of a person.

[21] For this provision to apply there must be objective grounds for believing that disclosing the information would result in the undue benefit or loss. The public body does not have to show that the undue benefit or loss is probable, but needs to show that there is a “reasonable expectation” that will occur if any of the information or records were released. The following criteria are used:

1. There must be a clear cause and effect relationship between the disclosure and the undue benefit or loss which is alleged;
2. The undue benefit or loss caused by the disclosure must be more than trivial or inconsequential; and
3. The likelihood of the undue benefit or loss must be genuine and conceivable.

[22] The University has applied subsection 17(1)(g) of LA FOIP to scoring criteria on the Review Checklists and certain portions of the e-mails.

[23] In its submission, the University stated:

The university relies on section 17(1) to exempt certain information that reveals evaluation criteria, weighting and information about the evaluation process, including correspondence between programs and the post-graduate medical education office, as it would provide the applicant or any person with information that could allow them to tailor their applications to certain post-graduate medical education programs and provide an unfair advantage in the application process, and may call into disrepute the College of Medicine should unqualified applicants gain a position in a postgraduate medical education program due to this unfair advantage. The evaluation criteria and weighting is specific to and set by each program.

1. Is there a clear cause and effect relationship between the disclosure and the undue benefit or loss which is alleged?

[24] As noted above, the University submitted that release of the evaluation criteria and the weighting of the criteria would allow future Applicants to tailor applications to gain an unfair advantage for gaining admission to a residency program. It also stated that this would be damaging to the University if it resulted in the admission of unqualified candidates.

[25] Upon review of the record, there are certain criteria that are standard in an academic setting. To make an application to a residency program, a candidate has to submit transcripts, letters from references and a Dean's letter which describes the student's past academic performance. The checklist describes favorable and unfavorable criteria to look for within this information. Academics work their entire career to achieve positive results which are reflected in this information. It is improbable that an individual, when making an application to a residency program, would be able to tailor this past performance for the purpose of the application. The description and weighting for these criteria does not meet this part of the test and would not qualify for exemption under subsection 17(1)(g) of LA FOIP.

[26] Candidates also must submit a personal letter describing their interest in a certain medical specialty. This is a document that candidates must tailor for each residency program. I agree that release of the brief description below the heading "Personal Letter" could cause undue benefit. I also agree that it meets the other two parts of the test and should be withheld pursuant to subsection 17(1)(g) of LA FOIP.

[27] I must also consider the portions of e-mails withheld under subsection 17(1)(g) of LA FOIP. In one instance, the severed portion discusses candidates with extended leaves. Again, this is not an element that can be tailored at the time an application is made. Further, upon review, it appears that this particular discussion is specific to that process in that year. If circumstances were different in future years, the discussion may not even take place. This would not result in undue gain. The other severed portion of an e-mail simply describes categories of potential candidates on a list of and asks the recipients to review the list. Criteria are not discussed. I am not convinced that subsection 17(1)(g) of LA FOIP applies to the e-mail.

[28] I find that subsection 17(1)(g) of LA FOIP only applies to the scoring criteria for the personal letter.

IV FINDING

[29] I find that subsections 17(1)(g), 28(1) and 30(3)(a)(ii) of LA FOIP apply to certain portions of the record.

V RECOMMENDATION

[30] I recommend the University release portions of the record to the Applicant as described in Appendix A.

Dated at Regina, in the Province of Saskatchewan, this 4th day of August, 2016.

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

Appendix A

# of Pages	Tab	Description	Exemptions and Recommendations
3	2	E-mail and appointment list for 2015 Radiology applicants	28(1) – Applies, withhold all portions severed pursuant to 28(1)
2	3	E-mail and list for 2015 Psychiatry applicants	17(1)(g) – Does not apply, release portions severed pursuant to 17(1)(g) 28(1) – Applies, withhold all portions severed pursuant to 28(1)
3	4	E-mail and list for 2015 Psychiatry applicants	17(1)(g) – Does not apply, release portions severed pursuant to 17(1)(g) 28(1) – Applies, withhold most portions severed pursuant to 28(1). Release name in sentence “Discuss with [name] Before Offering Interview” 30(3)(a)(ii) – Applies, withhold portions severed pursuant to 30(3)(a)(ii)
1	5	Review Checklist for Applicant - Psychiatry	17(1)(g) – Only applies to criteria listed under “Personal Letter”, release the other portions severed pursuant to 17(1)(g) 30(3)(a)(ii) – Applies, withhold portions severed pursuant to 30(3)(a)(ii)
1	6	Psychiatry interview offer list 1 st round	28(1) – Applies, withhold all portions severed pursuant to 28(1)
10	7-9	Psychiatry Review Checklists (only 5 pages relate to the Applicant)	17(1)(g) – Only applies to criteria listed under “Personal Letter”, release the other portions severed pursuant to 17(1)(g) 28(1) – Applies, withhold all portions severed pursuant to 28(1) 30(3)(a)(ii) – Applies, withhold portions severed pursuant to 30(3)(a)(ii)
6	-	Documents submitted by Applicant	None
3	10	Letters of reference	30(3)(a)(ii) – Applies, withhold portions severed pursuant to 30(3)(a)(ii)
1	-	Documents submitted by Applicant	None
2	11	Psychiatry First Round Interview Offer List	28(1) – Applies, withhold most portions severed pursuant to 28(1). Release name in sentence “Discuss with [name] Before Offering Interview”
3	12	Psychiatry Second Round Review checklists (only 5 pages relate to the Applicant)	17(1)(g) – Only applies to criteria listed under “Personal Letter”, release the other portions severed pursuant to 17(1)(g) 28(1) – Applies, withhold all portions severed pursuant to 28(1) 30(3)(a)(ii) – Applies, withhold portions severed pursuant to 30(3)(a)(ii)