



REVIEW REPORT 180-2015

Mamawetan Churchill River Regional Health Authority

November 23, 2015

Summary: The Applicant made an access to information request to Mamawetan Churchill River Regional Health Authority (MCRRHA) for two audit reports. MCRRHA denied access pursuant to subsections 18(1)(b) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). A Third Party also asserted that subsection 18(1)(a) and (c) of LA FOIP also applied. The Commissioner found that subsections 18(1)(a), (b) and (c) of LA FOIP did not apply, but subsection 28(1) applied to portions of the record.

I BACKGROUND

[1] On June 24, 2015, Mamawetan Churchill River Regional Health Authority (MCRRHA) received an access to information request for “Two Audit Reports: since in mid Aug 2, 2012, and mid Feb 2013.” On July 8, 2015, MCRRHA replied to the Applicant, indicating the response period would be extended pursuant to section 12 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) due to forest fires and subsequent evacuations in the area. On August 20, 2015, MCRRHA provided a response to the Applicant indicating that access to the responsive records was denied pursuant to subsections 18(1)(b) and 28(1) of LA FOIP.

[2] The Applicant was dissatisfied with MCRRHA’s response and requested a review by my office on September 21, 2015. On September 23, 2015, my office provided notification to the Applicant and MCRRHA of our intention to undertake a review. My office provided notice of the review to two Third Parties on October 14, 2015.

II RECORDS AT ISSUE

- [3] The records at issue are two audit reports. One of the audit reports was a forensic audit of the health centre completed by a Third Party. It focused on a nurse, who is referred to as “Nurse in Question” throughout the report. Other employees of the health center were interviewed for the purposes of the forensic audit.
- [4] The second audit report was an internal audit conducted by another Third Party. This internal report was focused on MCRRHA overtime and call-back payment processes for nurses.
- [5] MCRRHA had applied subsections 18(1)(b) and 28(1) of LA FOIP to the records. One of the third parties also believes subsections 18(1)(a) and 18(1)(c) also apply to the internal audit.

III DISCUSSION OF THE ISSUES

1. Did MCRRHA properly apply subsection 18(1)(b) of LA FOIP to the records?

- [6] Subsection 18(1)(b) of LA FOIP states:

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;

- [7] Both the MCRRHA and the Third Parties have indicated that subsection 18(1)(b) of LA FOIP applies to both records in their entirety.

- [8] My office has established a three part test for subsection 18(1)(b) of LA FOIP as follows:

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

1. Is the information financial, commercial, scientific, technical or labour relations information?

[9] MCRRHA's submission indicated that the responsive record contains labour relations information. My office has defined labour relations information as follows:

Labour relations information is information that relates to the management of personnel by a person or organization, whether or not the personnel are organized into bargaining units. It includes relationships within and between workers, working groups and their organizations as well as managers, employers and their organizations. Labour relations information also includes collective relations between a public body and its employees. Common examples of labour relations information are hourly wage rates, personnel contract and information on negotiations regarding collective agreements.

[10] I agree that the records contain labour relations information.

[11] Both Third Parties have indicated that the records contain commercial information. My office has defined commercial information as information relating to the buying, selling or exchange of merchandise or services. Upon review of both records, I do not agree that the record contains commercial information.

[12] One Third Party has said that there is technical information in the internal audit. My office has defined technical information as information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. It will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing.

[13] The Third Party's submission indicates that the internal audit describes a "methodology and framework" used to perform the audit. While the internal audit does describe some of the steps this Third Party took, these steps appear to be general actions such as meeting with staff, performing analysis, collecting documentation and testing. These are general activities one would expect during an audit. Technical information would capture information about how science or mathematics is applied in such a process. Upon review, the records do not contain technical information.

[14] The other Third Party has indicated that there is financial information in the forensic audit. My office has stated that financial information relates to money and its use or distribution and must contain or refer to specific data. I agree that the forensic audit contains some financial information.

2. Was the information supplied by the third party to a public body?

[15] As noted, the records appear to contain labour relations and financial information. However, this information must also be supplied by the third party to a local authority to qualify for this exemption.

[16] In its submission, MCRRHA asserts that the labour relations information in the records was supplied by the Third Party. It noted that my office has indicated that records can still be “supplied” even when they originate with the public body (i.e. the records still may contain or repeat information extracted from documents supplied by the third party). The submission states:

Yes, the information originated with MCRRHA to the third party. The third party gathered additional information (i.e. opinions) that the region did not have prior to their involvement and provided analysis of the information and gathered.

[17] The purpose of this exemption is to protect labour relations information of a third party. Upon review of the records, the labour relations information is specific to MCRRHA, not either of the Third Parties. My office’s position is that a record created by a public body would qualify under this exemption if it contains or repeats information extracted from documents supplied by the third party. In this case, the Third Parties created the records, but both the labour relations and financial information is of MCRRHA. Therefore, the information was not supplied to MCRRHA by a third party.

[18] Subsection 18(1)(b) of LA FOIP does not apply to the record.

2. Does subsection 18(1)(a) of LA FOIP apply to the record?

[19] Subsection 18(1)(a) of LA FOIP states:

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

(a) trade secrets of a third party;

[20] The Third Parties claims that the internal audit contains its trade secrets. Its submission states:

In particular, the Document discloses the project management methodology of the MCRHR's internal audit of the MCRHR's nurses' overtime payment process against existing policies. The Document contains information of [our] methodology, which outlines project management information that is proprietary to [name of third party]. More specifically, the Document contains information on [our] work plan which outlines our approach to these engagements and identifies the specific tasks and overall timing of the Project... The value of the methodology lies solely in it being a unique approach and distinctive from other project management processes. This methodology is highly safeguarded by [our] personnel at all levels and harm would occur by its mere disclosure.

[21] My office has established the following test to determine if a record contains a trade secret:

Trade Secret is defined as information, including a formula, pattern, compilation, program, device, product, method, technique or process:

- i) that is used, or may be used, in business or for any commercial purpose;
- ii) that derives independent economic value, actual or potential, from not being generally known to anyone who can obtain economic value from its disclosure or use;
- iii) that is the subject of reasonable efforts to prevent it from becoming generally known; and
- iv) the disclosure of which would result in significant harm or undue financial loss or gain.

[22] As noted above, the "methodology" used to by the Third Party in the audit appears to be general activities one would expect during an audit such as meeting with staff, performing analysis, collecting documentation and testing. The Third Party has not explained how these methodologies are unique or distinctive. Therefore, they would not derive independent economic value and disclosure would not result in significant harm or undue financial loss or gain.

[23] Subsection 18(1)(a) of FOIP does not apply to the record.

3. Does subsections 18(1)(c)(i) or (ii) of LA FOIP apply to the record?

[24] Subsection 18(1)(c) of FOIP states:

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

- ...
- (c) information, the disclosure of which could reasonably be expected to:
 - (i) result in financial loss or gain to;
 - (ii) prejudice the competitive position of; or
- ...
- a third party;

[25] One Third Party has indicated that release of the internal audit could reasonably be expected to result in financial loss for the Third Party or prejudice its competitive position.

[26] The Third Party submits that release of this record would result in financial loss which “would result in unfair gains to each of their competitors, who would be free to use the information to their competitive advantage at the expense of the organizations that devoted resources to develop their expertise.” Its submission suggests that competitors could copy its methodologies and unique approach. As noted, I have not been persuaded that the actions described in the record constitute a unique methodology or approach. Subsection 18(1)(c)(i) of LA FOIP does not apply to the internal audit.

[27] The Third Party also indicated that release of these methodologies could prejudice its competitive position. For the same reasons discussed above, I am not persuaded. Subsection 18(1)(c)(ii) of LA FOIP does not apply to the internal audit.

4. Did MCCRHA properly apply subsection 28(1) of LA FOIP?

[28] MCCRHA asserts that the information in the audit reports qualifies as employment history of the employees at a health center. It applied subsection 28(1) of LA FOIP to the entirety of both audit reports.

[29] Subsection 28(1) of LA FOIP provides as follows:

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.

[30] In order to qualify as personal information that can be withheld pursuant to subsection 28(1) of LA FOIP, the information must have the following two qualities:

1. The information must identify an individual,
2. The information must be personal in nature.

[31] First, I will determine if the information in the two audit reports identify individuals.

[32] In the forensic audit report, there are no named employees. However, there is enough information in the report to identify the employees. For example, the report names the health center. The name of the health center reveals the village in which the health center is located. The population of the village is just over a thousand people. Further, the reports are about five nurses and there are only ten nurses that work within this particular health center. There is enough information contained within the one audit report to identify the employees.

[33] The other audit report contains names of the employees so the employees are identifiable.

[34] Next, I need to determine if the information within the two audit reports is personal in nature. MCCRHA asserts that the information qualifies as employment history because the audit reports are about the employees facing allegations of wrongdoing in the workplace.

[35] My office has defined employment history as the type of information that is normally found in a personnel file which includes disciplinary actions taken. Such information would qualify as personal information as defined by subsection 23(1)(b) of LA FOIP, which provides:

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;

[36] It should be noted that the definition of personal information does not include work product. Work product is information generated by or otherwise associated with an individual in the normal course of performing his or her professional or employment responsibilities.

[37] When I review the forensic audit report, I find that there is indeed information about the employment history of the “Nurse in Question”. However, there is information within the forensic audit report that is not personal information. For example, the recommendations made by the Third Party would not qualify as personal information.

[38] When I review the internal audit report, I find there is indeed information about the employment history of a nurse. However, there is information within this internal audit report that is not personal information. For example, the findings and recommendations made by the Third Party would not qualify as personal information.

[39] I recommend that MCCRHA conduct a line-by-line review of the two reports pursuant to section 8 of LA FOIP. It should only apply subsection 28(1) of LA FOIP to the information that qualifies as personal information.

IV FINDINGS

[40] I find that subsections 18(1)(a), (b) and (c) of LA FOIP do not apply to the record.

[41] I find that subsection 28(1) of LA FOIP applies to some but not all of the information in the records.

V RECOMMENDATIONS

[42] I recommend that MCRRHA conduct a line-by-line review of the records and release portions of the record that do not qualify as personal information pursuant to subsection 28(1) of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 23rd day of November, 2015.

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