

REPORT WITH RESPECT TO THE APPLICATION FOR REVIEW
OF ██████████ IN RELATION TO INFORMATION
REQUESTED FROM THE REGINA HEALTH DISTRICT

By an Access to Information Request form, ██████████ requested of the Regina Health District (“the District”) a copy of the District’s 1999/2000 Operating Budget. The request was worded as follows:

“As approved by the Regina Health District Board, please provide the District’s 1999/2000 Operating Budget and Health Plan.”

In a letter dated December 3, 1999, Carolyn Hoffman, in her capacity as Coordinator, Quality Improvement Risk Management for the District, wrote ██████████ as follows:

“Your application for access to information was received by this office on November 19, 1999.

This letter is to advise you that the record you have requested cannot be released as it is considered a planning document until it is approved by the Provincial Minister of Health. Information of this nature is exempt from access according to Section 16, Subsection (1), Clause (a), (d) and (e) of The Local Authority Freedom of Information and Protection of Privacy Act.

If you wish to request a review of this decision, you may do so within one year of this notice. To request a review, please complete a “Request for Review” form, which is available at the same location where you applied for access. Your request should be sent to the Information and Privacy Commissioner.

Please contact me at 766-2470 should you wish to discuss this matter further.”

In a formal Request for Review, dated December 6, 1999, ██████████ requested a Review of the above decision of the District.

Section 16(1) and Section 16(2) of The Local Authority Freedom of Information and Protection of Privacy Act provides, in part, as follows:

16(1) Subject to subsection 16(2), a head may refuse to give access to a record that could reasonably be expected to disclose:

- (a) advice, proposals, recommendations, analyses or policy options developed by or for the local authority; ...
- (d) plans that relate to the management of personnel or the administration of the local authority and that have not yet been implemented; or
- (e) information, including the proposed plans, policies or projects of the local authority the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

(2) This section does not apply to a record that:

- (a) has been in existence for more than 25 years;
- (b) is an official record that contains a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function;
- (c) is the result of product or environmental testing carried out by or for a local authority, unless the testing was conducted:
 - (i) as a service to a person, a group of persons or an organization other than the local authority, and for a fee; or
 - (ii) as preliminary or experimental tests for the purpose of:
 - (A) developing methods of testing; or
 - (B) testing products for possible purchase;
- (d) is a statistical survey;
- (e) is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal; or
- (f) is:
 - (i) an instruction or guide-line issued to the officers or employees of a local authority; or
 - (ii) a substantive rule or statement of policy that has been adopted by a local authority for the purpose of interpreting an Act, regulation, resolution or bylaw or administering a program or activity of the local authority.

Sections 27 and 28 of The Health Districts Act allow health districts to borrow money, purchase, lease or sell real property or personal property, and construct or renovate facilities without the approval of the provincial Minister of Health as long as the amount of money in question is lower than the prescribed limits set out in the Act's Regulations. Section 31 of The Health Districts Act requires that districts supply the provincial Minister of Health with annual estimates, and states that a district shall not project an operating deficit without ministerial approval.

Thus, there are many circumstances in which a health district can unilaterally manage significant sums of money without ministerial approval. As such, in my opinion, the requested information does not properly fall within the exemption set forth in section 16(1)(a) of The Local Authority Freedom of Information and Protection of Privacy Act. A health district's operating budget is not merely a recommendation or a proposal to the provincial Minister of Health.

Section 37 of The Health Districts Act states that:

- (1) At least twice in each fiscal year, a district health board shall conduct a meeting of the district health board to which the general public is permitted access.
- (2) At one of the meetings mentioned in subsection (1), the district health board shall present:
 - (a) an operation and expenditure plan for the next fiscal year; and
 - (b) a report on the health status of the residents of the health district and the effectiveness of the district health board's programs.

In my opinion, given the expressed intent of the Legislature (as enunciated in Section 37 of The Health Districts Act) for the general public to have access to a meeting at which a health district's operation and expenditure plan for the upcoming fiscal plan would be presented, it would then be inconsistent to interpret Section 16(1)(d) of The Local Authority Freedom of Information and Protection of Privacy Act as including district-approved budgets within the meaning of plans which have not been implemented, and being exempt from disclosure. As such, it is my view that the requested information does not properly fall within the exemption set forth in section 16(1)(d) of The Local Authority Freedom of Information and Protection of Privacy Act.

The District also relies on section 16(1)(e) of The Local Authority Freedom of Information and Protection of Privacy Act, claiming that disclosure of the requested information could result in the disclosure of a pending budgetary decision. In my opinion, a "pending budgetary decision" involves deciding whether certain items should be included in the budget, and, as such, the appropriate time frame for such reference is prior to the budget being approved by the health district. Thus, it is my view that the

requested information does not properly fall within the exemption set forth in section 16(1)(e) of The Local Authority Freedom of Information and Protection of Privacy Act.

As part of my Review, I invited the District to comment on the import of section 37 of The Health Districts Act with respect to the application of [REDACTED]. The District responded by letter to me dated June 30, 2000 as follows:

“Thank you for providing the Regina Health District with the opportunity to review our decision of refusal of access to our 1999/2000 operating budget and health plan. As per your request, we have specifically considered the effect of Section 37 of **The Health Districts Act, 1998** on our ability to make the applicable decision.

The Access to Information Request from [REDACTED] was received in November of 1999. Our operating budget and health plan had been submitted to the Minister for approval but notification of same had not been received. There are a variety of potential outcomes that could occur based on the Ministerial review. Our proposed operational and expenditure plans, policies and/or projects could have been revised upon the direction of the Minister.

Section 26(3)(a) of **The Health Districts Act, 1998** states:

(a) each member of the district health board shall act in the best interests of all of the residents of the health district;

It is our position that releasing an unapproved operating budget and health plan without Ministerial endorsement **would not** be in the best interests of the residents of our district. Plans may be announced that have a significant impact to the delivery of health services with the potential that upon review the Minister would direct an alternate course of action. Undue stress and concern for significant populations within the district would undoubtedly occur.

Selected excerpts from Section 16(1) of **The Local Authority Freedom of Information and Protection of Privacy Act, 1996** state:

Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

(a) advice, proposals, recommendations, analyses or policy options developed by or for the local authority;

- (d) plans that relate to the management of personnel or the administration of the local authority and that have not yet been implemented;
- (e) information, including the proposed plans, policies or projects of the local authority, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

In our opinion this clause provides us with the ability to withhold the applicable unapproved operating budget and health plan until Ministerial approval has occurred. Section 37 of **The Health Districts Act, 1998** does not override our ability to use Section 16 of the Freedom of Information legislation when appropriate.

The Regina Health District would be pleased to release a copy of the approved budget and health plan when available.

Please contact me with any questions or concerns. I would be pleased to discuss this matter further at your convenience.”

The District’s most recent submissions have not altered my view of this matter. Firstly, section 37 of The Health Districts Act is not inconsistent with sections 16(1)(a), (d) and (e) of The Local Authority Freedom of Information and Protection of Privacy Act. Secondly, I note that The Health Districts Act does not contain a provision which requires that Ministerial approval for a health district’s operation and expenditure plan be obtained prior to it being presented at a meeting of the general public as described in s. 37 of that Act.

As was stated by Tallis, J.A. in General Motors Acceptance Corp. of Canada v. Saskatchewan Government Insurance (1993), 116 Sask. R. 36 at 41 (C.A.):

“The Act’s basic purpose reflects a general philosophy of full disclosure unless information is exempted under clearly delineated statutory language. There are specific exemptions from disclosure set forth in the Act, but these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act...”

In formulating my decision in this matter, I recognize that the requested document is referred to as the “Operating Budget and Health Plan”. As such, it may be the case that certain parts of the requested document do properly fall within the aforementioned exemptions. I therefore recommend that the District disclose the requested document; however, if any non-budgetary portions of the document properly fall within the

aforementioned exemptions, then the District may sever those portions. Further, this matter may be brought back before me to review any such severing made by the District.

Dated at Regina, in the Province of Saskatchewan, this 6th day of July, 2000.

GERALD L. GERRAND, Q.C.
Information and Privacy Commissioner
for Saskatchewan