SASKATCHEWAN

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

REPORT LA-2009 – 001

The Saskatchewan Health Research Foundation

Summary: The Applicant made four different applications to the Saskatchewan Health Research Foundation (SHRF) for grant applications made by researchers. SHRF denied access relying on sections 18(1)(b), 18(1)(c) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found that SHRF had authority to withhold the material pursuant to these sections, but recommended release of information withheld that was otherwise publicly available pursuant to sections 3 and 4 of LA FOIP. Though raised by the parties to the review, the Commissioner did not find that sections 17 or 13(2) of LA FOIP had any application in the circumstances.

Statutes Cited: *The Local Authority Freedom of Information and Protection of Privacy Act*, (S.S. 1990-91, c. L-27.1), ss. 2(k), 3, 4, 13(2), 17, 18, 23 and 28(1); *The Local Authority Freedom of Information and Protection of Privacy Regulations*, (c. L-27.1, Reg. 1), Appendix; *The Freedom of Information and Protection of Privacy Act*, (S.S. 1990-91, c. F-22.01), s. 19; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, ss.18(1)(b) and 65(8.1)(a); *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, s. 11(b); *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(p) and 25(1)(d); *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, s. 17(2); *Freedom of Information and Protection of Privacy Act*, S.N.S. 1993, c.5., s. 19B(2); *The Freedom of Information and Protection of Privacy Act*, C.C.S.M. 1997, c. F175, s. 28(1); *Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A-1.1, s. 5(1)(h); *Access to Information and Protection of Privacy Act*, S.N.W.T. 1994, c.20, s. 17(1)(d); and *Consolidation of Access to Information and Protection of Privacy Act*, S.N.W.T. 1994, c.20, s. 17(1)(d).

Authorities Cited: Saskatchewan Information and Privacy Commissioner (OIPC) Reports F-2006-002, 2006-001, 2005-003; Ontario IPC Order PO-2693; Alberta IPC Order 96-019; British Columbia IPC Order 00-36; Newfoundland and Labrador IPC Report A-2008-011; and Alberta Union of Provincial Employees v. University of Calgary, 2008 CanLII 51098 (AB L.R.B.).

Other Sources: Saskatchewan FOIP FOLIO, September 2004; *FOIP Guidelines and Practices* (2009), Government of Alberta; *Government Information Access and Privacy*, McNairn and Woodbury, Carswell, 2008; University of Saskatchewan Policies, *Administration of Research Grants and Contracts*, June 27, 2002; University of Saskatchewan, *Intellectual Property and Publication;* University of Saskatchewan, *What is a Contract*?; University of Saskatchewan, *Research Contract Path;* and SHRF Research Funding Peer-Review Committee Guidelines, January 2004.

I. BACKGROUND

[1] The Applicant submitted four access to information requests to the Saskatchewan Health Research Foundation (SHRF) for the grant applications of different researchers.

[2] SHRF received the Applicant's first application on or about April 15, 2004, for "Research Group Facilitation Grant Application – Cancer Proteomics Group Grant Application by John DeCoteau and Ron Geyer, University of Saskatchewan College of Medicine, 1st December 2003".

[3] On or about April 19, 2004, SHRF denied the Applicant's request citing sections 23(1) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP or the Act).[1]

[4] The Applicant's request for review involving this application was received in my office on August 12, 2004.

[1] *The Local Authority Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. L-27.1 [hereinafter LA FOIP].

[5] On November 22, 2004, we received SHRF's submission, dated November 19, 2004 advising us as follows:

> The applicant, […] modified his request to disclosure of sections 7 and 8.1 of the SHRF grant application. Accordingly we are responding directly to that issue. CV material with the grant application form, other than that disclosed on the website, is personal information and pursuant to section 28 of the *Act*, the SHRF objects to produce it except with the consent of the individuals concerned, which consent it does not have.
>
> **The request that sections 7 and 8.1 of the SHRF grant be disclosed is resisted under section 18(1) of the *Act*.**
>
> (emphasis added)

[6] On January 17, 2005, we contacted the Applicant to determine if he had in fact narrowed his access request. He advised us that he had not. He reiterated that his interest remained in the entire record, not just portions thereof.

[7] By letter dated January 31, 2005, and received on February 3, 2005, SHRF contacted us as it had identified three new responsive documents stating: "I don't see any problem disclosing these three documents to [the Applicant] if he is interested in them."

[8] On February 16, 2005, by letter dated February 15, 2005, SHRF advised us that:

> We are able to advise that the SHRF and Drs. DeCoteau and Geyer maintain their objection to the disclosure of information as dealt with in our letter to you of November 19, 2004, but remove any objection to the disclosure of information from the balance of the application.

[9] During the mediation process, SHRF agreed to release most of the withheld material (paragraphs 1-6 and 9-11), but still refused to disclose severed sections in paragraphs 7-8 of the record.

[10] On March 10, 2005 the Applicant contacted our office and confirmed receipt of a package of documents from SHRF. He did not receive the three additional documents as described in SHRF's January 31, 2005 submission. Our office received a copy of the

package on March 10, 2005, as per our request. The covering letter to the Applicant states: "A copy of the above research grant application is enclosed, with sections of the Research Plan (item 7) and the Budget (item 8, 8.1 and 8.2) blacked out…." Exemptions noted in the margins of the severed sections included one or more of the following: sections 18(1)(a), (b), (c) and (d) of LA FOIP.

[11] As the Applicant still sought the remaining withheld material, he requested that we complete our analysis with respect to the exemptions applied by SHRF.

[12] With this review underway, SHRF received the Applicant's next access to information request on or about April 1, 2005 and received two additional requests on or about May 6, 2005.

[13] SHRF responded to the Applicant after receipt of these three applications (second, third and fourth access to information requests) on or about April 29, 2005, June 1, 2005 and June 2, 2005 respectively, denying access each time pursuant to section 18(1)(b) of LA FOIP.

[14] The Applicant requested that we undertake reviews of each of the above denials as well as with his original request.

II. RECORDS AT ISSUE

[15] The records requested by the Applicant are as follows:

1. Severed sections of the research grant application by John DeCoteau and Ron Geyer with sections of the Research Plan (item 7) and the Budget (item 8, 8.1 and 8.2)
2. "Research Establishment Grant Application of Dr. Ronald Geyer" - 35 pages
3. "Research Fellowship Application – Yu Weiping" – 28 pages
4. "Research Establishment Grant Application – Dr. Wei-Feng Dong" – 57 pages

III. ISSUES

1. **Did the Saskatchewan Health Research Foundation properly apply section 18(1)(b) of *The Local Authority Freedom of Information and Protection of Privacy Act* to the withheld records in question?**

2. **Does section 18(1)(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* apply to portions of the record?**

3. **Did the Saskatchewan Health Research Foundation properly apply section 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act*?**

4. **Does section 17 of *The Local Authority Freedom of Information and Protection of Privacy Act* have any application in this review?**

5. **Does section 13(2) of *The Local Authority Freedom of Information and Protection of Privacy Act* have any application in this review?**

6. **Do sections 3 and 4 of *The Local Authority Freedom of Information and Protection of Privacy Act* have any application in this review?**

IV. DISCUSSION OF THE ISSUES

1. **Did the Saskatchewan Health Research Foundation properly apply section 18(1)(b) of *The Local Authority Freedom of Information and Protection of Privacy Act* to the withheld records in question?**

[16] SHRF is a local authority for purposes of LA FOIP[2].

All four applications

[2] *The Local Authority Freedom of Information and Protection of Privacy Act Regulations*, c. L-27.1, Reg. 1, Appendix, PART II, Boards, Commissions and Other Bodies Prescribed as Local Authorities [Subclause 2(f)(xvii) of the Act], includes The Saskatchewan Health Research Foundation.

[17] Section 18(1)(b) of LA FOIP provides as follows:

> **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;

[18] SHRF argues that it must withhold the materials requested by the Applicant in terms of his second, third and fourth applications,

> Because the entirety of all the subject documents is scientific or technical information that is supplied in confidence to the SHRF by a third party, the entire document is protected by the application of LA FOI, section 18(1)(b) …
>
> The C.V. information included in the grant applications, while possibly not scientific or technical information as contemplated by section 18(1)(b), is nonetheless protected by a mandatory LA FOI exception because it is personal information.

[19] In terms of the first application, though not originally raised by SHRF in its section 7 response to the Applicant, section 18(1) of LA FOIP is later noted as mandatory authority to withhold the severed portions of the record from the Applicant. As stated in our September 2004 issue of the Saskatchewan FOIP FOLIO:

> We will still consider mandatory exemptions at the review stage even if they were not raised by the public body in its response to the applicant.[3]

[20] In considering the application of section 18(1)(b) of LA FOIP, I must begin my analysis with determining if the information at issue in each case was supplied by "a third party" as defined by section 2(k) of LA FOIP.

[3] Saskatchewan FOIP FOLIO, September 2004, available at: www.oipc.sk.ca/newsletters.

a) Third party status

[21] A helpful resource, *Government Information Access and Privacy* by McNairn and Woodbury (McNairn), offers the following general description of what constitutes "third party information":

> All of the access statutes provide exemptions for various kinds of information provided to the government by other, non-governmental persons, **or affecting such persons in specified ways**. This type of information is known as third party information.[4]
>
> (emphasis added)

[22] Each grant application at first glance appears to have been prepared and submitted to SHRF by individual researchers. In the case of the first application, the research group leader was identified as John DeCoteau/Ron Geyer. In the case of the second, the principal applicant is Ronald Geyer; the third, Weiping Yu; and the last, Wei-Fing Dong. Co-applicants are also named.

[23] A usual step in the application process is that the principal applicant and co-applicants fill out the "personal data" section of the grant application providing the following: detailing role in the proposed project; academic degrees and other research training; academic and professional experience; other academic distinctions; publication record; research grant or personnel awards currently held; research grants or personnel awards applied for; and lastly, signatures. In terms of the application process, funding decisions appear based mostly on the merits of the application and the standing of the individual researchers. In this regard, the researchers distinguish themselves from the institutions they are otherwise affiliated with or employed by. Whether or not each or any of these data elements constitutes personal information of the researchers in question will be determined later in this Report.

[4] *Government Information Access and Privacy*, McNairn and Woodbury, Carswell, 2008, p. 3-49 [hereinafter McNairn].

[24] The Applicant disagreed however that the researchers would qualify as third parties as defined by the Act as indicated below.

> As the research to be conducted by the researchers at the University of Saskatchewan (hereinafter referred to as "the U of S"), will utilize the facilities and personnel of the U of S, and the grant application was signed by the researchers, which are faculty members and employees of the U of S, and by executive officers of the U of S including the Vice-President of Research of the U of S, indicating their acceptance of the terms and conditions for research funding from the local authority, **the researchers were acting as agents of the U of S when applying for the research funding**, and at all times material, therefore, any economic interests would involve the interests of the U of S which is an autonomous corporation as described in U-6.1, s.3, and also a local authority under s. 2(f)(xi) of the *Act*.
>
> Further, s. 2(k) of the *Act* states that, **a "third party" means "a person, including an unincorporated entity, other than an applicant or a local authority**". **Since the U of S is a local authority, then disclosure of that information would not affect the interests of a third party, therefore, exemptions made under s.18(1) of the *Act* are a nullity from the outset**.
>
> (emphasis added)

[25] Though referencing *The Freedom of Information and Protection of Privacy Act*,[5] not LA FOIP, in my Report F-2006-002, I clarified the following with respect to third party status:

> [75] A third party cannot be another provincial government institution since section 2(1)(j) of the Act provides that: "*third party" means a person, including an unincorporated entity, other than an applicant or a government institution*."[6]

[26] Similarly, "third party" is defined by LA FOIP[7] as "a person, including an unincorporated entity, other than an applicant or a local authority." As with the above analysis, I find that the University of Saskatchewan (U of S or the University), as a local authority, cannot be a third party to which section 18 of LA FOIP may apply. The issue that I must therefore address is whether or not the researchers submitted the grant applications to SHRF on behalf of the U of S, or if instead in the circumstances the researchers may be distinguished as third parties for purposes of section 18(1) of LA FOIP.

[5] *The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01.
[6] Saskatchewan OIPC Report F-2006--002 at [75], available online at http://www.oipc.sk.ca/reviews.htm.
[7] Section 2(k).

[27] When asked to clarify, SHRF provided the following on this question:

> The researchers are neither the Applicant … nor the Local Authority (which in this case is SHRF). **Neither are they, in relation to this matter, agents of the University that employs them, which the Applicant has proposed**.
>
> **SHRF has always considered the individual researcher(s) as the grant applicant(s) and not their universities**. While the university does provide various supports for the research and its officials sign the grant application indicating such support, the **grant application is from the individual researchers for funding to do scientific inquiry related to their own particular area of interest**.
>
> **The scientific ideas and plans contained in grant applications are developed independently by the researchers. University faculty and research scientists are expected to be independent thinkers and to pursue unique and leading-edge lines of inquiry; the University does not direct their lines of inquiry. This concept is known as "academic freedom" and is protected in faculty collective agreements. While the University may well have a financial interest in discoveries that result from such work, the scientific ideas and work are those of the researchers. Per our understanding and experience, researchers do not submit applications for research grants as "agents" of the University**.
>
> **Another supporting point** … **is that if a researcher based at the University of Saskatchewan (U of S) moved to the University of Regina, we would allow that transfer because it's the individual's grant not the U of S's grant**.
>
> In conclusion, based on the above information, we maintain that the grant applications in question were supplied by the individual researchers and not by the University of Saskatchewan. As such, the researchers meet the LA FOIP definition of "third party" as presented in our September 2005 submission.
>
> (emphasis added)

[28] The above argument is compelling but requires further consideration.

[29] If these individuals made application for these grants on behalf of the University, the third party exemption cannot apply as another local authority cannot constitute a third party for purposes of the Act. To find that the researchers are or are not third parties, do I need to make a formal determination as to whether the relationship with the U of S is one of employee/employer? It is not abundantly clear that whether or not the researchers are categorized as employees of the U of S would be determinative one way or another.

[30] In Ontario Order PO-2693 at p. 16-18, the Senior Adjudicator contemplates this question:

> [I]n the context of this appeal, it is necessary to analyze the relationship between those conducting or proposing the research to determine whether they are employees of, or associated with, the University.
>
> In Order PO-2641, Assistant Commissioner Brian Beamish considered the definition of employee in determining whether the President of a university is an employee of the university:
>
> > In arriving at my conclusions, I have considered the definition of "employee" found in Black's Law Dictionary (6th. ed.). "Employee" is defined as:
> >
> > > A person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed…One who works for an employer; a person working for salary or wages. Generally when a person for whom the services are performed has right to control and direct the individual who performs the services not only as to result to be accomplished by work but also as to details and means by which result is accomplished, individual subject to direction is an "employee"
> >
> > Order P-244 set out relevant factors that may be considered in deciding whether or not a person is an employee or an independent contractor. These include:
> >
> > - the level of control and supervision exercised by the person requiring the work to be done, with respect to how the work is to be performed, in what setting and under what conditions, the hours of work, as well as the results of the work; and
> > - whether the work was part of the essential ongoing operation of the employer.
>
> Researchers in university settings frequently collaborate with colleagues at other universities, as well as third parties, such as pharmaceutical companies.
>
> …
>
> Regardless of whether the researchers are actual employees or not, I am satisfied that the research in question is conducted or proposed by individuals who are all "associated with" the University.[8]

[8] Ontario IPC Order PO-2693 (2008), available at: www.ipc.on.ca/english/advanced-search.

[31] Though LA FOIP does not have a similarly worded provision to Ontario's section 65(8.1)(a)[9] discussed above, this Order is helpful nonetheless for showcasing the subtle nuances in the professional relationships of researchers to the universities to which he/she is a part.

[32] Alberta Union of Provincial Employees v. University of Calgary,[10] examines whether or not certain individuals may be characterized as employees of the University of Calgary as follows:

> [291] It is also clear from the evidence that it is extremely important to grantors and those awarding research contracts that the University as an institution be engaged in the business of research. It is vital to the conduct of research and the continuing flow of research funds that there be rules on subjects like scholarly integrity, conflicts of interest, ethics in human research, financial controls, and others, and an institution capable of enforcing those rules. **It is another important point that grantors require that grant applications be made subject to University approval, and that the research is governed by contracts between the grantor and the University, not the principal investigator. By contracting with the University, the grantor is securing oversight, ultimate control, and access to physical and administrative infrastructure that individual scholars could not provide on their own.**
>
> …
>
> [293] All these things convince us that the University is itself in the research business as one of its core activities. But are trustholders also in the research business on their own account? They act like entrepreneurs in many respects. We heard much evidence of the time and effort that scholars devote to identifying funding opportunities, applying for grants, organizing and overseeing the project, and producing and disseminating the results of the research. We were told how little assistance the University provides to the scholar looking for research funds. **Witnesses told us of the high degree of freedom scholars enjoy in identifying research opportunities, conceiving their projects, and deciding how to carry them out.**
>
> …

[9] In Ontario, section 65(8.1)(a) of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31 [hereinafter Ontario FOIP] states as follows: "This Act does not apply, (a) to a record respecting or associated with research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution;"

[10] Alberta Union of Provincial Employees v. University of Calgary, 2008 CanLII 51098 (AB L.R.B.).

> [296] **So, although scholars may act like entrepreneurs, they do so because their employer allows and even encourages it. They have the trappings of entrepreneurial freedom because academic freedom requires a general posture of University non-interference; because University administration lacks the subject matter expertise to closely control the scholar's research activities; and because the University believes that this is the best way to optimize the quality and quantity of research done by its academic staff. This does not make the scholars real entrepreneurs, however. It does not make their activities a business separate from the much larger business that is the overall conduct of research at the University of Calgary.**
>
> …
>
> [307] **The entrepreneur test, or "Whose business is it?", points strongly to the University as the employer because we have concluded that the University is itself engaged in the business of research and the academic staff do not engage in the business of research independently of their employment and academic appointments.**
>
> …
>
> [309] We judge that on balance, the conclusion that the University is the employer of all, or almost all, these test case employees, is so far the stronger. If our analysis were to stop here, that would be the result.
>
> …
>
> [318] There is an exception to our conclusion. It was important to our reasoning that the University possesses latent, or ultimate, control over these trust employees through their management rights of control over the academic staff. **This control does not exist over clinical and adjunct appointees, who are "mere appointees", not employees of the University.** We consider that the lack of any such means of control by the University is sufficiently important to alter the result in those cases. We are thus prepared to say that, where a trust employee is engaged exclusively by a trustholder who is not an employee of the University, that trustholder is the employer.
>
> (emphasis added)

[33] I am not convinced that such an involved consideration as in the above case is warranted in the present circumstances, but it is helpful as it introduces another method, albeit complex, for determining if the individual qualifies for employee status in a research setting in a university.

[34] As an alternative, Alberta IPC Order 96-019 addressed the question as to whether an employee of a public body may also constitute a "third party" for purposes of section 16(1) of its FOIP Act[11] as follows:

> [72.] "Third party" is defined in the Act to mean "a person, a group of persons or an organization other than an applicant or a public body"[12]. **A public body is therefore excluded from the definition of "third party". Is there anything to suggest that an employee of a public body should also be excluded?**
>
> …
>
> [75.] Furthermore, **if an employee of a public body cannot be a "third party", absurd consequences result: there cannot be any "personal information" for that employee under the Act.** Consequently, the public body would not be prohibited from disclosing personal information such as an employee's home address or telephone number, educational, financial or employment history, and personnel evaluations. **I do not think the Act intended such a consequence, which would be contrary to the purpose of protecting personal information under the Act.**
>
> …
>
> [77.] **In my view, an employee of a public body can be compared with an employee of a corporation. An employee of a corporation is considered to be a person separate from the corporate entity; similarly, an employee of a public body is a person separate from the public body itself**.[13]
>
> (emphasis added)

[35] The above is relevant as it raises the possibility that in some circumstances, employees of a public body may qualify for third party status. As such, I need to further examine the roles that the University and the researchers each assume in the application process.

[11] *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 [hereinafter Alberta FOIP].
[12] Definition of public body in section 1(p) of the Alberta FOIP Act, includes "(vii) a local public body"; Further, from *FOIP Guidelines and Practices* (2009), Government of Alberta at p. 211: "Third parties include individuals, sole proprietorships, partnerships, corporations, unincorporated associations and organizations, non-profit groups, trade unions, syndicates and trusts (see IPC Order 98-008 for examples of third parties that required notification). An employee of a public body can also be a third party (IPC Order 96-019)."
[13] Alberta OIPC Order 96-019, March 6, 1997, available at: www.oipc.ab.ca/orders/orders.cfm.

[36] From the University's website, www.usask.ca, the policy: Administration of Research Grants and Contracts states:

> Sponsor is taken to mean the agency, organization or entity that funds the grant or contract. The Grant or Contract holder is the University. **The Investigator or the Principal Investigator is the individual who is primarily responsible for carrying out the research of the grant and/or terms of the contract. The Investigator will also be considered the "Financial Manager" associated with the grant or contract.**
>
> Grants are those awards that typically have the following provisions:
>
> - Payment is made by the Sponsor to the University in advance
> - **The Investigator has control of the research project or program.**
> - **Publication rights of the Investigator are not restricted.**
> - Ownership of all intellectual property rights is relinquished by the Sponsor.
> - All assets purchased for conducting the research are owned by the University.[14]
>
> (emphasis added)

[37] Again, from the U of S website:

> Intellectual property is the term used to describe the creative results of research and scholarly activity which may have immediate realizable value or value upon further development and commercial use or production. It may take various forms, such as patentable discoveries and inventions, copyrightable works (books, painting, photographs, computing software, graphics, etc.) non-patentable technical know-how and trade secrets. **Ownership of intellectual property vests in the creator but is assignable. University faculty and staff assign certain intellectual property ownership rights to the University on appointment**.
>
> By definition, within the terms of grant funding, any Intellectual Property ("IP") rights remain with the University. In a contract however, the IP rights should be defined and are typically open for negotiation with the sponsor. Research Services regularly reviews IP terms as part of negotiating research agreements.
>
> The University Industry Liaison Office is the unit with the responsibility of negotiating stand-alone IP agreements for University research and handling technology transfer activities. Research Services works closely with ILO on IP matters and the Principal Investigator may expect both units to be involved where IP is a significant concern.

[14] University of Saskatchewan Policies, *Administration of Research Grants and Contracts*, June 27, 2002, available at: www.usask.ca/university_secretary/policies/research/8_20.php.

> Principal Investigators should be aware that IP concerns can arise very early in discussions with potential sponsors. ILO should be consulted about confidentiality/non-disclosure issues when novel research that may be patentable is likely to be discussed.[15]
>
> (emphasis added)

[38] Yet from another U of S webpage is the following:

> How does a **grant** differ from a **contract**?
>
> - Results intended for public dissemination
> - **Research initiated by the Principal Investigator**
> - Funds are provided in advance of expenditures
> - Publication is unrestricted; there are no provisions for review prior to release
> - **Any Intellectual Property developed remains with the University and no rights are granted to sponsor**
> - Principal Investigator can not be compensated under the project
> - Principal Investigator may use funds as he/she feels most appropriate for the research
> - Assets purchased under the project are owned by the University [16]
>
> (emphasis added)

[39] Finally, also from the U of S website, I took the following:

> Under terms of *The University of Saskatchewan Act, 1995* the University of Saskatchewan must be named as the contractor in research contracts which involve the institution and any of its employees. **Faculty members and other staff members cannot enter into or sign contracts on behalf of or binding on the University.**
>
> For a contract to be binding on the University, contracts must be signed by duly authorized representatives for the Chair and Secretary of the Board of Governors, according to the University Signing Authority Policy . This policy concerns University contracting and the delegation of authority to contract on behalf of the University. It reflects the commitment of the University to the proper management of and accountability for the resources of the University. Compliance will assist in safeguarding University resources through the application of consistent management practices and controls in the contracting process.

[15] University of Saskatchewan, *Intellectual Property and Publication*, available at: http://www.usask.ca/research/research_services/publication.php.
[16] University of Saskatchewan , *What is a Contract?*, available at: http://www.usask.ca/research/research_services/what_is_contract.php.

> For a Principal Investigator who leaves the University of Saskatchewan, all grants and contracts held by that individual will be reviewed to ensure compliance with their respective terms and conditions.
>
> When possible, continuation of the research project at the University of Saskatchewan should be facilitated. Should the sponsor transfer the role of Principal Investigator to another researcher at the University, the Fund administration will also be transferred. **If the departing researcher maintains his/her role as Principal Investigator (has Adjunct Professor status), Fund administration will remain with the Principal Investigator**.
>
> **If the Principal Investigator is transferring to another research institution, transfer of contracts may be accommodated, subject to outstanding commitments to the University of Saskatchewan.**
>
> If continued research at the University of Saskatchewan is not possible, and after transfer of contracts has been executed, any residual funds shall remain with the University under the direction of the Dean, in consultation with the Department Head. These funds must be used for research purposes. [17]
>
> (emphasis added)

[40] Also of note is the following excerpt taken from a letter dated January 29, 2004, not part of the responsive record, to Dr. DeCoteau:

> The conditions of the grant are as follows:
>
> …
>
> 3) **The grant will be held in your name, as the person designated in the proposal to be responsible for the funding**. We will be communicating with you, as the lead person, and will expect you to share the information with your team.
>
> (emphasis added)

[41] After reviewing the materials provided by the parties and available on the SHRF's and University's websites, I am able to distinguish between the roles played by the researchers and the University, and liken the relationship to a partnership as neither may make application without the other's agreement and cooperation.

[17] University of Saskatchewan, *Research Contract Path*, available at: http://www.usask.ca/research/research_services/contract_path.php.

[42] Along this line of thinking, I found the following helpful from the Alberta publication, *FOIP Guidelines and Practices* (2009) (Government of Alberta Guide):

> A third party is defined in section 1(r)…. For example, a contractor providing catering and support services to a public body was found to be a third party to an access request for the contractor's proprietary information (see *IPC Order 99-008*).
>
> Even if one of the members of a partnership is a public body, the partnership may still be a third party under the FOIP Act (see *IPC Order 2000-005*).[18]

[43] In terms of FOIP legislation across Canada, there are common provisions related to research materials. The following wording comes from the B.C. FOIP Act: "a public body may refuse to disclose…research information if the disclosure could reasonably be expected to deprive the researcher of priority of publication." [19] Although the wording is slightly varied from jurisdiction to jurisdiction, it is very similar across most of Canada.[20] However, Manitoba and Nova Scotia protect research materials in different respects.

[44] Nova Scotia's FOIP section 19B(2) reads:

> (2) The head of a local public body may refuse to disclose details of the academic research being conducted by an employee of the local public body in the course of the employee's employment.[21]

[45] This is the most similar to LA FOIP's section 17(3), which states as follows:

> 17(3) The head of the University of Saskatchewan, the University of Regina or a facility designated as a hospital or a health centre pursuant to *The Regional Health Services Act* may refuse to disclose details of the academic research being conducted by an employee of the university, hospital or health centre, as the case may be, in the course of the employee's employment.

---

[18] *FOIP Guidelines and Practices* (2009), Government of Alberta, at p. 102, available at: http://foip.alberta.ca/resources/guidelinespractices.
[19] *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, s. 17(2) [hereinafter B.C. FOIP].
[20] See LA FOIP section 17(1)(c); B.C. FOIP section 17(2); Alberta's FOIP section 25(1)(d); Ontario's *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, section 11(b); Ontario's FOIP section 18(1)(b); NWT's *Access to Information and Protection of Privacy Act*, S.N.W.T. 1994, c.20, section 17(1)(d); and Nunavut's *Consolidation of Access to Information and Protection of Privacy Act*, S.N.W.T. 1994, c.20, section 17(1)(d).
[21] *Freedom of Information and Protection of Privacy Act*, S.N.S. 1993, c.5.

[46] Manitoba's FOIP section 28(1) is more specific yet:

> The head of a public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to harm the economic or financial interests or negotiating position of a public body … including the following information:
>
> …
>
> (d) innovative scientific or technical information obtained through research by an employee of a public body . . .[22]

[47] I also considered Order 00-36 from David Loukidelis, Information and Privacy Commissioner of British Columbia, which completely excludes research information from the application of its Act:

> **3.1 Does the Act Apply?** – The CHR says, in effect, that it did not need to respond to the applicant's access request because the disputed record is not subject to the Act by virtue of s. 3(1)(e). That section reads as follows:
>
> > 3(1) **This Act** applies to all records in the custody or under the control of a public body, including court administration records, but **does not apply** to the following:
> >
> > …
> >
> > (e) a record containing teaching materials or **research information of employees of a post-secondary educational body;** ….[23]
>
> Section 3(1)(e) only applies to "teaching materials" or "research information" of an "employee of a post-secondary education body". Here is the CHR's argument on the s. 3(1)(e) issue, as set out in its initial submission:
>
> > 5.05 The Capital Health Region, as a Public Body, operates in a manner remarkably similar to a post-secondary educational body in having its employees and others carry out research.

[22] *The Freedom of Information and Protection of Privacy Act*, C.C.S.M. 1997, c. F175.
[23] Newfoundland and Labrador's *Access to Information and Protection of Privacy Act*, (S.N.L. 2002, c. A-1.1) section 5(1)(h) uses virtually the same wording.

> 5.06 In this case, some of the Public Body researchers who share a proprietary interest in the research information are employees of a post-secondary educational body. Therefore, it is submitted in accordance with section 3(1)(e) of the Act that the record of the research information severed from the Btk Study Protocol is not subject to a request under the Act.
>
> …
>
> It should be said that s. 3(1)(e) will not apply simply because someone who happens to be employed by a post-secondary educational body is engaged, under contract or otherwise, to do research for or with a public body such as the CHR. Section 3(1)(e) is intended to protect individual academic endeavour. It will protect the intellectual value in teaching materials or research information developed by an employee of a post-secondary educational body, for her professional purposes, by protecting it from disclosure to those who might exploit it to her disadvantage.
>
> I will give an example of information that would likely not be excluded from the Act under s. 3(1)(e). If an expert on water quality, who happens to be employed by a university, is retained by a local government to conduct water quality tests, the results of those tests will not be "research information of" that person. If the person is retained to develop new methods for water testing (or does so in the course of conducting tests for a public body) and has or retains no intellectual property in the methods she devises, the methods – assuming they truly qualify as "research information" within the meaning of s. 3(1)(e) – will not be research information "of" that person. They will, at best, be research information of the public body and thus will not be excluded from the Act by s. 3(1)(e).[24]
>
> (emphasis added)

[48] As the status of the researchers as third parties was unclear from representations made by the Applicant and SHRF, I invited the University to make representation on that specific question. The U of S provided the following for my consideration:

> For reasons that will be outlined below, it is our position that applications made to the Saskatchewan Health Research Foundation by researchers at the University are covered by the exemption contained in s. 18(1)(b). While we agree that the University, being a local authority, does not fall within the definition of a 'third party' set out in s. 2(k) of *The Local Authority Freedom of Information and Protection of Privacy Act*, it is our position that **the information contained in the applications is that of the researcher and not the University**. In the event that the information used to complete applications to the SHRF is found to be that of the University and not the researcher(s), it is our position that there is a valid exemption applicable to these records in any event.

[24] British Columbia OIPC Order 00-36, Inquiry Regarding A Capital Health Region Research Protocol, August 11, 2000, available at: www.oipcbc.org/orders.

> …under the policies of the University of Saskatchewan any funding obtained through grant applications approved by Research Services is the property of the University. That, however, does not make the information used to complete those applications the property of the University.
>
> The University does review and approve grant applications, however this does not involve a scientific review of the substance of the proposed research (area of inquiry, methods, etc.). The review is focused on aspects which are administrative and compliance-related in nature, and ensuring institutional and agency policies and guidelines are adhered to. It is worth noting that the Funding Application/Approval Form, a copy of which is enclosed, asks whether the applicant will allow the application to be shared with future applicants. If this approval is not received, the application is not shared. We would submit that this confirms that the information in the application is considered to be that of the researcher who prepared it. Similarly, ownership of any patents arising from such research is shared between the University and the researcher pursuant to the terms of the collective agreement with the Faculty Association.
>
> …
>
> It is therefore the position of the University that the records identified as exempt by the SHRF should not be disclosed. **The information in these records is provided by the researchers who complete the grant application, not the University.** The exemption provided by s. 18(1)(b) is therefore applicable in our view.
>
> (emphasis added)

[49] I commented in a previous Report that when generated in the course of his/her duties by an employee of a public body, the resultant product is considered "work product."[25] I see the materials in question with respect to the present case as being different for a number of reasons. With work product, control lies with the public body as the employee cannot dictate what happens to the materials he/she prepares in the course of his/her employment, and when he/she leaves, the material must remain behind in the public body's possession or control and subject to its record retention/disposition schedule. With research information, the author appears to at least retain some rights with respect to that material (i.e. intellectual property, publication rights, ownership of patents, etc) and therefore some control.

[25] Saskatchewan OIPC Report 2006-001 at [113], available online: www.oipc.sk.ca under *Reports* tab.

[50] As the grant application is composed, for the most part, of the researcher's and his/her team's materials to which he/she maintains at least shared rights and whose relationship with the University is akin to a partnership, I find that the researchers in the present case constitute third parties for purposes of this review. Accordingly, I will proceed further with my consideration of the full application of section 18(1)(b) of LA FOIP to the withheld material where applicable.

Second, third and fourth applications

[51] SHRF claims that section 18(1)(b) of LA FOIP exempts from release the material withheld. In support of its position, it offered the following:

> The SHRF submits that the entire grant application is scientific, technical information that is supplied to the SHRF in confidence by the third party grant applicant. As such, the entire document is exempted from disclosure by application of section 18(1)(b). Information which is understood on submission of the application not be confidential is that which is made publicly available on the SHRF website and in its annual reports (Appendix 1).
>
> **b) Does the exempt material constitute scientific, technical, commercial, or financial information?**

[52] SHRF offered the following in terms of its approach to the key terms listed in section 18(1)(b) of LA FOIP:

> In a discussion of the meaning of "financial, commercial, scientific, technical" in section 18(1)(b) of the *Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01, Saskatchewan IPC Report 2005-006 (Appendix 5) cites, at para. 22, Alberta IPC Order 96-013 which held that in the equivalent Alberta section "[t]hose words should be given their ordinary dictionary meaning". The SHRF submits that this should also be applied to the words "financial, commercial, scientific, technical" in LA FOI section 18(1)(b).

[53] I am in agreement in as much that I view those terms as referenced in both FOIP and LA FOIP to mean the same thing.

[54] SHRF further defined two of the above referenced terms as follows:

> The Merriam-Webster online dictionary defines scientific as "of, relating to, or exhibiting the methods or principles of science". Merriam-Webster online dictionary defines technical as, among other things, "having special and usually practical knowledge especially of a mechanical or scientific subject," or "marked by or characteristic of specialization" (Appendix 6). The SHRF submits that the information provided in the subject grant applications falls within either or both of the dictionary definitions of scientific and technical.
>
> Because the entirety of all the subject documents is scientific or technical information that is supplied in confidence to the SHRF by a third party, the entire document is protected by the application of LA FOI, section 18(1)(b). The information provided in the subject documents is the result of many years of hard work and application of skill. It describes the scientific and technical research done by the third party grant applicants to this point; the resources the grant applicants will require to continue the research; and how the grant applicant proposes to continue the research.

[55] From my Report F-2006-002, I elaborated further on the application of these terms:

> [85] The Alberta's Annotated FOIP Act defines the terms "scientific" and "technical" as follows:
>
> > *The phrase "scientific information" is information exhibiting the principles or methods of science, and "technical information" is information relating to a particular subject, craft or profession that is used on a specific technique or approach (Orders 2000-014 [26], 2000-017 [31-32], 2001-022 [14], 2001-026 [26], F2002-002 [35]. To qualify as "technical information of a third party", the information must have been developed by the third party . . .*
>
> …
>
> [87] Ontario IPC Order PO-1811 is also helpful. It reads, in part:
>
> > *Previous orders of this office have defined "scientific", "technical" and "commercial" information as follows:*
> >
> > > *<u>Scientific Information</u>*
> > > *Scientific information is information belonging to an organized field of knowledge in either the natural, biological or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypothesis or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning separate from technical information which also appears in this section [Order P-454].*

> *Technical Information*
> *Technical information is 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. While, admittedly, it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in a field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information which also appears in this section [Order P-454]*.
>
> . . .
>
> [89] The provision in the above case is different than its Saskatchewan counterpart. Even though the records in question may have information that qualifies as scientific or technical information, section 19 of the Act does not require that the record must 'reveal information', rather it must constitute scientific or technical information 'from the third party'.[26]

[56] The various grant applications consist mostly of technical and scientific information (i.e. purpose and objective of study, methodology, hypothesis and specific aims, experimental plan, plans for data analysis, description of research environment). A few line items in each appear to constitute financial information instead.

[57] "Financial information" is discussed in my Report 2005-003 as follows:

> [23] Alberta's *Annotated Freedom of Information and Protection of Privacy Act* defines "financial information" as follows:
>
> > "*includes information regarding the monetary resources or financial capabilities of a third party and is not limited to information relating to financial transactions in which the third party is involved (Orders 96-018 [pp.3-4], 2001-008 [42], F2002-002 [35]. Examples of "financial" information include information regarding insurance, past performance, estimated advertising costs and expected or proposed commission (Order 98-006 [61]).*
>
> [24] Financial information within the record includes the fees and expenses proposed by MNP as necessary in completing the project. Other financial information includes the dollar amounts customers pay for utility rates.

[26] *Supra* note 6.

> [25] A broader explanation of what constitutes "financial information" is offered in Ontario/IPC, Order MO-1246. It reads, in part as follows:
>
> > *"Financial information relates to money and its use or distribution and must contain or refer to specific data. Examples of "financial" information include cost accounting method, pricing practices, profit and loss data, overhead and operating costs (Orders P-47, P-87, P-113, P-228, P-295 and P-394).*
> >
> > …
>
> [27] Some material, particularly the proposed analysis of calculations/methodology, may be considered technical information as it pertains to the analysis that MNP will be required to undertake as part of their responsibilities under this proposal. However, this only applies to specific sections of the record only.[27]

[58] The record contains the following financial information: costs associated (expenditures) with various aspects of the grant application including equipment (quotes), salaries and benefits, materials and supplies, research field travel, professional/technical services contracts, travel to scientific meetings/knowledge travel, etc.

[59] What the records do not contain is "commercial information" as it "has sometimes been taken to be limited to information related to the buying, selling or exchanging of goods or services," or "has sometimes been construed, more broadly, to mean such information as relates or pertains to commerce or such information as concerns the operations of a commercial entity."[28]

c) Were the withheld grant applications "supplied in confidence implicitly or explicitly" by those same third parties to SHRF?

[60] From my Report F-2006-002 quoted above, is the following:

> ***a. Were the records or information contained in the records at issue "supplied" to SRC by the various third parties?***
>
> …

[27] Saskatchewan OIPC Report 2005-003, available online: www.oipc.sk.ca under *Reports* tab.
[28] *Supra* note 4 p. 4-3.

> [77] The following excerpts from Ontario IPC Order PO-2020 are helpful in further clarifying when information may be considered to have been supplied:
>
> > *To meet the second part of the test, **it must be established that the information in the records was actually supplied to the Ministry**, or that its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the Ministry (Orders P-203, P-388, P-393).*
> >
> > *Record 75 consists of minutes of a meeting held between representatives of MCCR [Ministry of Consumer and Commercial Relations] and the primary affected party. Although the record was not created by the primary affected party, I find that some of the portions of the record that constitute technical or commercial information reveal information that clearly on the face of the record was supplied by the primary affected party during the course of the meeting.*
> >
> > *Record 80 is a report prepared by the primary affected party for MCCR and provided to the MCCR. Therefore, I am satisfied that all of the information in Record 80 was "supplied" to MCCR by the primary affected party.*
>
> [78] As earlier discussed, it appears that the same information that would qualify as "obtained" by SRC in section 13(1)(a) of the Act would also qualify as information "supplied" to SRC by those same third parties under section 19(1)(b) of the Act.
>
> [79] Section 19(1)(b) of the Act also states that the record has to contain information that was "supplied in confidence". In our earlier analysis, we determined that sample information provided or received was done in confidence. However, section 19(1)(b) also requires that the information in question qualify as financial, commercial, scientific, technical or labour relations information in order for the provision to apply. Section 13(1)(a) of the Act merely requires that the information was obtained in confidence. The application of section 19(1)(b) of the Act is narrower.[29]
>
> (emphasis added)

[61] Section 18(1)(b) of LA FOIP is worded the same as its counterpart, section 19(1)(b) of FOIP, so the above is directly applicable in the present case. As the researchers submitted the grant applications to SHRF, the supplied test is met.

[62] In my Report F-2006-002 at [37] to [55], I discussed the "supplied in confidence" test. To determine if the information in question was provided "explicitly or implicitly in confidence" the following factors should be considered:

[29] *Supra* note 6.

[56] The *Annotated Alberta Freedom of Information and Protection of Privacy Act* (Alberta's Annotated FOIP Act) publication offers definitions of the above-noted terms as listed below:

> Page 5-16-5, discusses "provided in confidence, implicitly or explicitly".
>
> *In the past, factors that have been cited to support a finding that information has been supplied to a public body by a third party in confidence include:*
>
> *a. the existence of an express condition of confidentiality in an agreement between a public body and the third party (Orders 97-013 [23-27], 2001-008 [54], 2001-019 [15]);*
> *b. the fact that the public body requested the information be supplied in a sealed envelope (Order 97-013 [23-27]);*
> *c. the third party's evidence that it considered the information to have been supplied in confidence (Order 97-013 [23-27]);*
> *d. the fact that the third party supplying the information was promised by the public body that he or she would not be identified (Order 2000-003 [122]); and*
> *e. the passing of a motion that the information remain private (Order 2001-019 [15]).*

[57] Also, the same tool defines "implicitly" as meaning,

> *that the confidentiality is understood even though there is no actual statement of confidentiality, agreement, or other physical evidence of the understanding that the information will be kept confidential. In such cases, all relevant facts and circumstances need to be examined to determine whether or not there is an understanding of confidentiality including whether the information was:*
>
> *a. communicated to the public body on the basis that it was confidential and that it was to be kept confidential;*
> *b. treated consistently in a manner that indicates a concern for its protection from disclosure by the third party prior to being communicated to the public body;*
> *c. not otherwise disclosed or available from sources to which the public has access; or*
> *d. prepared for a purpose which would not entail disclosure.*[30]

[30] *Ibid.*

[63] To defend its "supplied in confidence" argument, SHRF offered the following:

> The SHRF's Access to information and protection of privacy policy and procedure (Appendix 2) specifically states, in para. 3, that the SHRF will not provide access to application for funding [grant application] because it contains scientific and technical information. Access will be denied unless the third party consents to disclosure. This policy is also clearly outlined for the public on SHRF's website (Appendix 3).
>
> The application is handled confidentially by SHRF throughout the process. Grant applications are informed of this confidentiality in the SHRF Awards Guide (Appendix 4). This confidentiality includes a requirement that peer reviewers, once the review is complete, shred and/or delete from their computers any material relating to the application (Access to information procedure, para. 4.2). However, the SHRF access to information procedure recognizes the importance of public access to information by providing the SHRF will attempt to accommodate any requests for access to information (para. 5).
>
> If the information provided in the subject documents was not treated confidentially, grant applicants would likely be unwilling to provide it to the SHRF as it would put them at competitive disadvantage in their area of research to have the information disclosed.

[64] Further, as part of its submission dated September 9, 2005, SHRF reproduced from its website, www.shrf.ca, a page containing details of its application process (Tab 4). The following excerpt is taken from that document under the heading Application Process:

> 3.2 Confidentiality
>
> All applications are submitted to SHRF in confidence with personal and proprietary information used only for the purposes for which it is originally gathered plus related activities necessary to fulfill SHRF's mandate.

[65] I find that the grant applications were provided to the SHRF explicitly in confidence and therefore section 18(1)(b) of LA FOIP was properly applied.

The first application

b) Does the exempt material constitute scientific, technical, commercial, or financial information?

[66] Same as earlier analysis.

c) Were the withheld grant applications "supplied in confidence implicitly or explicitly" by those same third parties to SHRF?

[67] I have already determined that all four grant applications were supplied by third parties to SHRF. However, I must still consider if the first grant application was provided "implicitly or explicitly in confidence" to SHRF as I found the others were.

[68] In its original submission of November 19, 2004, the SHRF provided a copy of the SHRF Research Funding Peer-Review Committee Guidelines dated January 2004 (Tab 1 in binder). Under Review Procedures section 3.1.1 appears the following:

> **3.1.1** Confidentiality is vital to maintaining the credibility of the adjudication process. **All information in applications, all review comments and discussions, and all scores and ranking will be kept confidential by the chair, committee members, external reviewers, and staff.**
>
> **3.1.2 Committee members must not discuss individual applications or reviews with anyone not formally involved in the process**. They will refer any comments or questions from colleagues and others about the review process to the program and evaluation officer.
>
> (emphasis added)

[69] In Tab 2 of the binder noted above, section 3 reads,

> Per section 18 of *The Act*, SHRF will NOT provide access to a record that contains that **trade secrets or scientific and technical information supplied to SHRF in confidence** (e.g. **applications for funding** and applications for employment), **unless the individual consents to such access**. Section 17, however, provides for disclosure of the amount of funding provided and application titles for research supported, along with the applicant's name.
>
> (emphasis added)

[70] Additionally, SHRF explained that,

> The SHRF in its privacy policy and guidelines maintains confidentiality of third party information either because it is personal information and/or third party information for which there is an expectation of privacy or as required by law.

[71] Finally, taken from an early submission to our office, SHRF asserted the following: "In a letter dated September 29, 2004 from Drs. DeCoteau and Geyer received by SHRF on October 4, 2004 the two researchers refused consent." Though offered after the fact, the objection noted supports the notion that the applications were expected to be held in confidence.

[72] In terms of the withheld line items or paragraphs, SHRF marked certain portions as exempt pursuant to one or all of the following sections: 18(1)(a), 18(1)(b), 18(1)(c), 18(1)(c)(ii), (iii) and 18(1)(d) of LA FOIP. I note that SHRF did not apply these same sections to the other three withheld grant applications. I find that section 18(1)(b) of LA FOIP applies to most of the withheld material. As section 18(1) of LA FOIP is a mandatory provision and I have already found that section 18(1)(b) of the Act applies to almost all of the exempt material, it is not necessary to consider the application of the other listed subsections except for a small portion of the first record to which section 18(1)(c) of LA FOIP may apply.

2. Does section 18(1)(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* apply to portions of the record?

The first application

[73] The applicable section is as follows:

> 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

(iii) interfere with the contractual or other negotiations of;

a third party; or

[74] The only clause above that may have any application in my view is 18(1)(c)(ii) of LA FOIP.

[75] In an early submission to our office with respect to the Applicant's first request, SHRF argued the application of section 18(1)(c) of the Act as follows:

> The request that section 7 and 8.1 of the SHRF grant be disclosed is resisted under section 18(1) of the *Act*. The SHRF grant applicants [Drs. John DeCoteau and Ron Geyer] refuse to consent to the disclosure of this information except as expressly allowed because:
>
> A. Section 7
>
> (1) Long Term Goals
>
> Disclosure of this information would reduce the competitive advantage of the researchers in this field. Giving details including planning and how they intend or hope to achieve their goals over time, would allow other groups doing similar research to target strategically their funding and program objectives.
>
> (2) Progress to Date
>
> This describes the nature of the group, its expertise, infrastructure and advances in the research. If other researchers know how far advanced these researchers are in their research, it would adversely affect their competitive ability to compete for additional funding grants. It would also allow competitors to tailor their own strategies for research and competing grant applications.
>
> The researchers do not object to information disclosure on grants already obtained as this is public knowledge. However they do object to disclosure of grants applied for and not obtained as knowledge of this by competitors would adversely affect the competitive position of these researchers for funding allocations (i.e. competing grant applications for the same funding).

(3) Details of Work to be Done and Timetable

This outlines the strategy of the research group to obtain objectives over the next two years. Others would use this information to speed up their program or use it to critique and improve their own. Disclosure of this information could not only lead to loss of competitive advantage, but plagiarization of their intellectual property.

(4) Researchers Named

This identifies what each person will contribute to the project and gives an insight into how the research group is organized, their expertise and inputs and collective infrastructure to achieve the goals of research. This knowledge would enhance the competitive position of another group who wishes to establish a similar research project.

(5) Research Facilities and Environment

This information describes how and where the researchers will obtain materials to study and the infrastructure used to implement the study. Competitors would use this information to set up a similar competitive program.

B. Section 8.1

(1) Details of Budget for SHRF Grant

This describes where funding will be used and the emphasis on the funding. It gives competitors insight into the infrastructure the researchers will use to achieve their goals. The researchers are implementing a new infrastructure in Canada for use in identifying new protein targets suitable for the development of novel therapeutic interventions.

Other researchers will have assembled an infrastructure to solve the same problem and knowledge of the strategy of these researchers could adapt their infrastructure and learn from these researchers and use parts of this infrastructure to enhance their own.

The budget details and amounts, except for the gross amounts at the bottom, are excluded because these indicate emphasis of plan and details of expenditures. The researchers are concerned that others may gain insight into what they are doing and compare it to their own research to gain a competitive advantage.

The researchers do not object to the disclosure of gross amounts of funding from home institutions but do object to the disclosure of their purpose as this will give insight into the staffing of their research project.

[76] The Applicant's counterargument is as follows:

> Further, as C-34, the *Competition Act* applies to "the general regulation of trade and commerce", it is clear that "competition" refers to business practices affecting free economic markets. Since the researchers are not involved in conducting any business and are not expected or permitted to conduct any such business on their own account, or as a result of receiving the research funding, the disclosure of such information would not reasonably be expected to affect the "competitive advantage" or economic interests of the researchers. Further, this argument is based on the premise that the researchers possess or may possess some information of value and that the value of this information exceeds the value of the information possessed by other researchers, which is speculation, or that the information they possess or may possess is more correct than the information possessed by other researchers, which is also speculation. Further, since any "intellectual property" that may be produced as a result of receiving the research funding had not been produced as a result of receiving the research funding had not been produced at the time the application for funding was submitted, and any potential effect on the "competitive advantage" or economic interests of the researchers is dependent on the existence of such intellectual property, which is hypothetical in nature, then any such effect on the "competitive advantage" or economic interests of the researchers is also hypothetical. Further, the purpose of the grant funding is to support the establishment of a "research group" with common interests:
>
> > The SHRF Awards Guide 2004 s.10.1 states that the purpose is [sic] of the Research Group Facilitation Group Program is to: "encourage and facilitate the formation and development of new groups that consist of active researchers with common interests who are studying matters associated with the human health sciences, the health related social sciences or other human health-related fields of study and who are interested in establishing a longer-term association with each other"…
>
> As the purpose of the funding is very general in nature, and not intended to support any particular research project involving any particular scientific information or any specific scientific project, but to support the general development of a group of researchers with common interests, then the disclosure of the details of such a proposal, or budgetary details broadly outlining the allocation of financial resources between different categories of proposed expenditures, or specific details about proposed employment positions or the salaries and benefits thereof, would not reasonably be expected to affect the "competitive advantage" or economic interests of the researchers. Pharmaceutical companies with highly competitive business strategies involved in identical areas of research routinely publish categories of proposed expenditures, and advertise proposed employment positions with complete job descriptions detailing the specific skills and duties involved, without fear that this type of disclosure will affect their "competitive advantage" or economic interests.

[77] I considered the FOIP equivalent, section 19(1)(c)(ii), to LA FOIP's section 18(1)(c)(ii) in my Report 2005-003. The following from that Report is of relevance:

> [35] In Alberta, as a result of a number of Orders of the Commissioner, the public body must meet the following three part test: (a) there must be a clear cause and effect relationship between the disclosure and the harm which is alleged; (b) the harm caused by the disclosure must constitute "damage" or "detriment" to the matter and not simply hindrance or minimal interference; and (c) the likelihood of harm must be genuine and conceivable.
>
> [36] Since section 19(1)(c)(ii) of Saskatchewan's Act does not expressly require the disclosure to "*harm **significantly** the competitive position*" (emphasis added), a modification of the 3 part test is required. **The three part test that should be applied in Saskatchewan consists of the following elements: (a) there must be a clear cause and effect relationship between the disclosure and the harm which is alleged; (b) the harm caused by the disclosure must be more than trivial or inconsequential; and (c) the likelihood of harm must be genuine and conceivable**.
>
> …
>
> [40] The expectation of harm in this instance is purely hypothetical, as no evidence has been presented on the likelihood of harm occurring if in fact the record was disclosed.[31]
>
> (emphasis added)

[78] In terms of applying the above noted three part test, I am of the view that the likelihood of harm is conceivable as any grant process is in itself a competitive process. What is likely is that if one grant applicant had access to another's, he/she could use it to his/her advantage supplementing or making revisions to his/her own application which could in turn alter the outcome. Therefore, I find that the cause and effect relationship is clear, the harm that may result would be more than trivial or inconsequential, and the likelihood of the harm resulting is plausible.

3. Did the Saskatchewan Health Research Foundation properly apply section 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* to the withheld information in question?

[31] *Supra* note 27.

[79] The applicable provisions of the Act are 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:
>
> (a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;
>
> (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;
>
> …
>
> (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;
>
> **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.

The first application

[80] In SHRF's original response letter dated April 19, 2004 to the Applicant, SHRF explains that,

> Information provided to SHRF in research funding applications is personal information, as defined in section 23(1) of the Act, and is submitted to us on the explicit understanding that this is confidential information (ref. item (g) under section 23(1)). Section 28(2) indicates that SHRF may only use such information for the purposes for which it was collected, ie., processing within our funding program. Section 28(1) indicates that we may not disclose such information unless we receive express consent to do so from the individual(s) to whom the information relates (in this case, the researchers who submitted the grant application to SHRF), which we do not have.

[81] Though SHRF provided this written argument, application of section 28(1) of LA FOIP is not evident on the record itself. Rather, the exemptions cited, as indicated earlier, are different clauses of section 18(1) of LA FOIP. For instance, SHRF severed line items pertaining to the roles of individuals of those involved to some extent in the proposed research projects pursuant to section 18(1), not 28(1) of LA FOIP. I will not consider further as I have already found that sections 18(1)(b) and (c) of the Act apply to the exempt material.

Second, third and fourth applications

[82] SHRF argued that the record contained the personal information of someone other than the Applicant. In this regard, SHRF explains:

> The C.V. information included in the grant applications, while possibly not scientific or technical information as contemplated by section 18(1)(b), is nonetheless protected by a mandatory LA FOI exception because it is personal information. Section 28(1) provides that a local authority is not permitted to disclose personal information, except with the consent of the individual, which in this case it does not have.

[83] In order for the above to apply, the information in question must firstly constitute personal information as defined by section 23(1) of LA FOIP.

[84] Each grant application on its face appears to contain some personal information of the "principal applicant and all co-applicants". For instance, the application contains a section requesting academic degrees and other research training as well as academic and professional experience. Also, there are sections for these individuals to provide details of "other academic distinctions", "publication record" "research grants or personnel awards (currently held) and (applied for)." In the case of Weiping Yu, the following detail is included in the withheld records: applicant's academic training, proof of degree, information about PhD Degree and Academic Honours and Awards, academic, research and other relevant work experience.

[85] Some of the above constitutes work history pursuant to section 23(1)(b) of LA FOIP. Other information may not by reason of section 23(2) of LA FOIP.

[86] Section 23(2) of LA FOIP provides as follows:

> (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;
>
> (e) details of a discretionary benefit of a financial nature granted to an individual by a local authority;
>
> …
>
> (g) the academic ranks or departmental designations of members of the faculties of the University of Saskatchewan or the University of Regina; or
>
> (h) the degrees, certificates or diplomas received by individuals from the Saskatchewan Institute of Applied Science and Technology, the University of Saskatchewan or the University of Regina.

[87] The academic ranks, degrees, etc. received by the researchers by institutions other than those listed above in 23(2)(g) and (h) I find to be the personal information of the researchers in question. However, any obtained from the above institutions are releasable.

[88] By way of the Applicant's first request for review received in our office on August 12, 2004, he raised another possible application of section 23(2) of LA FOIP as follows:

> Would request that L-27.1, s.8 (severability) be applied and the remainder of the document not containing "personal information" about the applicants be disclosed. According to L-27.1, s. 23(2), "**personal information" does not include** "**details of a discretionary benefit of a financial nature granted to an individual by a local authority**." Would request in particular that sections 7 and 8.1 of SHRF grant application detailing proposed activities, expenditures and descriptions thereof be disclosed.
>
> (emphasis added)

[89] On plain reading, section 23(2)(e) of LA FOIP sounds like it would allow for disclosure of details of the monetary award, but not the application itself which would be the subject of deliberation. Further consideration is required before the application of this section may be discounted.

[90] I have not in previous Reports had cause to consider section 23(2)(e) of the Act. In the Newfoundland and Labrador IPC Report A-2008-011, the following is relevant:

> [67] I must now determine if the donation given by the Member represents a "discretionary benefit" as set out in paragraph (l) of section 30(2). The term "discretionary benefit" was discussed by the Alberta Information and Privacy Commissioner in Order 2001-020. The Commissioner, in commenting on the term as found in Alberta's *Freedom of Information and Protection of Privacy Act*, stated at paragraphs 17 to 19:
>
> > *[para. 17.] "Discretionary benefits" is not a defined term in the Act. I have not previously considered the meaning of this phrase in section 16(2)(e).*
> >
> > *[para. 18.] In Order 98-014, I said that a "benefit" means, among other things, a favorable or helpful factor or circumstance, or an advantage. The Dictionary of Canadian Law (2nd Edition) defines benefit as: "3. Compensation or an indemnity paid in money, financial assistance or services." Both definitions suggest that a "benefit" can run the gamut from the purely discretionary (that, is, gratuitous) to being required by law.*
> >
> > *[para. 19.] In Orders 98-014 and 98-018, I considered the general meaning of the word "discretionary." I found that, in the simplest terms, "discretionary'" means that a decision-maker has a choice as to whether, or how, to exercise a power.*
>
> [68] I adopt the definitions of "benefit" and "discretionary" given by the Alberta Commissioner. Applying these definitions to the facts of the case before me, I have no hesitation in finding that the fifty dollar donation is a benefit granted to the named recipient. In addition, **it is, in my view, obvious that the fifty dollar donation was a benefit of a "financial nature" within the meaning of paragraph (l) of section 30(2). Furthermore, I find that the benefit was discretionary because the Member had a choice as to whether or not to make the donation**. As was stated by the House in its submission: "[The Member] was an MHA carrying [sic] a constituency role for which, at the time, the public body allocated funds to MHAs which were used by them for the purpose of constituency donations." It was the Member who exercised the discretion on behalf of the House as to whether and to whom the donation was to be made.

> [69] Consequently, I have determined that the fifty dollar donation given by the House to the named recipient is a discretionary benefit of a financial nature granted to a third party by a public body. However, in order for paragraph (l) of section 30(2) to operate, the disclosure (in the case before me, releasing the names at issue) must reveal the "details of a discretionary benefit." Therefore, I must determine whether the names on the receipt and the expense claim form constitute a detail of the discretionary benefit granted by the House of Assembly to a third party.
>
> [70] The meaning of the word "detail" is given in the Concise Oxford English Dictionary, Tenth Edition, Revised, as "a small individual feature, fact or item." It is my view that one of the individual facts relating to the discretionary benefit granted by the House of Assembly to a third party would be the name of the third party to whom the benefit was granted. As such, I find that the name of the recipient of the donation is a detail that should be revealed. However, in my opinion, the name of the person who signed the receipt acknowledging the donation does not constitute a fact relating to the discretionary benefit. The signature containing the name is simply a confirmation that the benefit was bestowed; it is not a detail of the benefit itself. Therefore, the name of the person signing the receipt constitutes personal information and is not covered by the exemption to section 30(1) set out in paragraph (l) of section 30(2) of the *ATIPPA*.[32]
>
> (emphasis added)

[91] The Alberta Guide is once again insightful, as follows:

> Benefit means a favourable or helpful factor or circumstance, or an advantage. For example, a grazing lease on public land falls within the definition of benefit (IPC Order 98-014).
>
> …
>
> *Discretionary* refers to the power of a decision-maker to determine whether, or how, to exercise a power or grant a benefit.
>
> …
>
> This provision enables disclosure of information that reveals details of a discretionary financial benefit granted to an individual by a public body.
> *A discretionary benefit of a financial nature* is any monetary allowance that the public body may decide to provide (e.g. a scholarship or a grant).
>
> *Grant* means to "give" or "confer" discretionary benefits in situations where there is no requirement by the grantor to provide such benefits (*IPC Order F2007-025*).

[32] Newfoundland and Labrador IPC Report A-2008-011, available at: www.oipc.nl.ca/accessreports.

> ***Details* of a financial discretionary benefit are not limited to the amount paid to the third party, but include the third party's name, the reasons for providing the benefit and any consideration given to the public body in exchange for granting the benefit.**
>
> **Section 17(2)(h)** does not apply to information regarding eligibility for income assistance or social benefits, or regarding the determination of individual benefit levels since these benefits are discretionary; they are calculated according to entitlement formulae.
>
> Also, **section 17(2)(h)** does not apply to discretionary benefits that are received by a third party in his or her capacity as an officer, employee or member of a public body since these benefits are covered by **section 17(2)(e). Section 17(2)(h)** does apply to discretionary benefits in a settlement agreement reached with a public body where the benefits are being provided to the third party in his capacity as a *former* employee (*IPC Order F2007-025*).
>
> **Section 17(2)(h) does not apply** to background personal information required by the public body or **provided voluntarily by an individual applying for a benefit**. [33]
>
> (emphasis added)

[92] I do not find that section 23(2) of LA FOIP applies as the record at issue is the application itself, not details of an amount paid along with reasons for granting the benefit.

[93] Copies of travel and citizenship documents are included in the responsive material. These are clearly personal information of that data subject pursuant to section 23(1) of LA FOIP.

[94] To the extent that the record contains personal information of the researchers, I find that section 28(1) of LA FOIP applies.

4. Does section 17 of *The Local Authority Freedom of Information and Protection of Privacy Act* have any application in this review?

[33] *Supra* note 18 p. 119 - 120.

[95] The wording of the applicable provisions is as follows:

> 17(1) Subject to subsection (3), a head may refuse to give access to a record that could reasonably be expected to disclose:
>
> …
>
> (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;
>
> …
>
> (3) The head of the University of Saskatchewan, the University of Regina or a facility designated as a hospital or a health centre pursuant to *The Regional Health Services Act* may refuse to disclose details of the academic research being conducted by an employee of the university, hospital or health centre, as the case may be, in the course of the employee's employment.
>
> (4) Notwithstanding subsection (3), where possible, the head of the University of Saskatchewan, the University of Regina or a facility designated as a hospital or a health centre pursuant to *The Regional Health Services Act* shall disclose:
>
> (a) the title of; and
> (b) the amount of funding being received with respect to;
>
> the academic research mentioned in subsection (3).

[96] As part of its argument, SHRF provided the following to support its position that the record should not be released:

> These access to information requests were made to the SHRF, however, they could have equally been made to the University of Saskatchewan (U of S). All the subject grant applicants were applying to the SHRF for funding as employees of the U of S. As such, all of their applications were sanctioned by the U of S and the U of S is therefore also a third party grant applicant.
>
> If these access to information requests were made to the U of S, they would have had the opportunity to deny access based on LA FOI section 17(3) which reads in part:
>
> > The head of the University of Saskatchewan…may refuse to disclose details of the academic research being conducted by an employee…in the course of the employee's employment.

> With respect to the subject documents, the U of S as a third party relies on the refusals to disclosure of its employees, and therefore does not find it necessary to invoke section 17(3). However, ii remains illogical to require disclosure of information from one local authority that would not be required to be disclosed if requested from another local authority. This reasoning, the SHRF submits, supports its argument that the information in the subject documents should not be disclosed.
>
> The access to information policy and procedure of the SHRF is in the spirit of sections 17(3) and 17(4). While access to details of the application is denied, the title and the amount of funding received by the applicant is made publicly available in annual reports and online. In addition, in most cases a brief summary of the research is also provided.

[97] The above is not at issue as the Applicant did not make application to one of the institutions listed in 17(3) of LA FOIP.

5. Does section 13(2) of *The Local Authority Freedom of Information and Protection of Privacy Act* have any application in this review?

[98] The applicable provision is as follows:

> 13(2) A head may refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from another local authority or a similar body in another province or territory of Canada.

[99] Though the University's primary position is that section 18(1)(b) applies, it proposed an alternative argument:

> In the event that the position set out above is incorrect, it remains our position that there is a valid exemption applicable to the records in issue. Although the exemptions contained in s. 18 would not apply to the University, it is our position that the exemption set out in s. 13(2) is applicable in this case. The language used in that provision is very similar to that from s. 18(1)(b), in that both speak of exempting information provided in confidence, either implicitly or explicitly. In fact s. 13(2) is broader, as it is not limited to financial, commercial, scientific or labour relations information.

> Our position is that if any information provided by a third party is exempt under s. 18(1)(b), it is also exempt under s. 13(2) when provided by another local authority. This position is consistent with s. 17(3) of the Act, which states that the University is entitled to: "refuse to disclose details of the academic research being conducted by an employee". We submit that it would be inconsistent with the intention of these sections of the Act if information provided to the SHRF in confidence cannot be exempted from disclosure when the request is made to the SHRF, but yet would be exempt if requested from the University directly.
>
> We understand that during a review, the Office of the Information and Privacy Commissioner has a general policy of not considering exemption claims that were not made in the original response to the Access to Information Request. We would submit that this would not be an appropriate situation to apply such a policy, if it is in fact considered applicable here. There are two reasons we are taking this position. First, the University has not been involved in this matter until now. As such, it did not have the opportunity to provide input on the exemptions which were applicable in this case. The second reason is that the University ought not to be prejudiced by a misunderstanding as to which entity (the researcher or the University) is considered to be the party providing the information for the grant application. We believe it is also important to note that this is not a case where the exemption now being claimed is different in substance from that originally asserted by SHRF. On the contrary the basis for the exemption, information provided in confidence, is identical.
>
> It is therefore the position of the University that the records identified as exempt by the SHRF should not be disclosed. The information in these records is provided by the researchers who complete the grant application, not the University. The exemption provided by s. 18(1)(b) is therefore applicable in our view. In the event this is not accepted, it is our position that an equivalent, if not broader, exemption contained in s. 13(2) applies. It is also submitted that the University and researchers associated with these funding applications should not be prejudiced by a misunderstanding by another party as to which of these two equivalent exemptions applied.

[100] The University's submission above is not particularly helpful for a number of reasons. Firstly, the U of S argued that the researchers are third parties, yet at the same time argued that the researchers are employees. Secondly, the U of S argued that the University and researchers associated with the funding applications would be prejudiced because SHRF misunderstood which exemption should be applied; yet the U of S is also unclear as to which would apply. Finally, I am unclear as to what is meant by the statement, "did not have the opportunity to provide input on the exemptions which were applicable in this case." SHRF provided third party notification to the researchers, not the University. In my view, the fact that the U of S wasn't afforded the opportunity earlier

has no bearing on this review as SHRF did not recommend release of the materials in question. The issue is that the U of S was invited to provide representation and it now has. From McNairn, although addressing third party arguments for non-disclosure in the federal review process, I nonetheless find useful the following:

> However, if a discretionary exemption from disclosure is in question, even if the institution or the court were to be persuaded that the exemption applies, it does not follow that the requested information should not be disclosed as disclosure is essentially in the discretion of the institution in this situation (see section 3.1(a) of the text). Therefore, it is reasonable to conclude that arguments from a third party against disclosure on the basis of a discretionary exemption would not have the same utility, as in the case of a mandatory exemption, since they would not, even if successful, be determinative of the question of whether the requested information should be disclosed. Thus, there is a strong rationale for foreclosing a third party from raising discretionary exemptions while allowing such a party to raise mandatory exemptions.[34]

[101] Further, in its section on "absence of standing", McNairn offers the following:

> If a government institution concludes that a particular request is not likely to involve third party information or, in some jurisdictions, sensitive personal information, it is not required to give notice to anyone before deciding in favour of disclosure (see section 4.3). A person potentially affected by the release of the requested information might maintain,
>
> - first, that the institution was wrong in its preliminary conclusion about the nature of the information, and
> - second, that the decision to disclose was in error.
>
> However, that person, for lack of third party status, will usually be without standing to obtain a review of any determination made by the government institution. The institution may have erred in not recognizing a third party interest, yet there is no statutory remedy in those circumstances. Review is generally open only to someone whom the institution was prepared to treat as a third party entitled to make representations in the context of its consideration of the request for information.[35]

[34] *Supra* note 4 p. 6-19.
[35] *Ibid.* p. 6-15 & 6-16.

[102] Based on the above, and as I have already determined that the majority of the record is exempt pursuant to sections 18(1)(b), (c) and 28(1) of LA FOIP, I will not consider the potential application of section 13(2) of LA FOIP further.

6. Do sections 3 and 4 of *The Local Authority Freedom of Information and Protection of Privacy Act* have any application in this review?

[103] The applicable sections of LA FOIP are as follows:

> 3(1) This Act does not apply to:
>
> (a) published material or material that is available for purchase by the public;
>
> (b) material that is a matter of public record; or
>
> 4 This Act:
>
> (a) complements and does not replace existing procedures for access to information or records in the possession or under the control of a local authority;
>
> (b) does not in any way limit access to the type of information or records that is normally available to the public;
>
> …

[104] In an early argument, without making direct reference to sections 3 or 4 of LA FOIP, SHRF made the following observation:

> When all the information that is exempted from disclosure by section 18(1)(b) and section 28(1) is severed from the subject documents, what remains to be disclosed does not constitute meaningful disclosure. What remains to [sic] is information that is already publicly available on both the SHRF website and in its annual reports.

[105] SHRF further advised us that:

> In addition, the response noted that the third party grant holder's name and institutional affiliations, project title, amount of grant and a research summary was publicly available in the SHRF's annual reports and on the SHRF website.

[106] SHRF included with its submission information printed from its website, www.shrf.ca pertaining to Dr. Geyer, Weiping Yu and Wei-Feng Dong. Whether the University made this information available pursuant to section 17 or based on some long standing procedure does not matter. The issue is that grant applications 2, 3 and 4 do contain some of this publicly available detail.

[107] In those cases where the information contained in the record is already publicly available, I see no reason for SHRF to continue withholding from the Applicant. In that respect, I recommend release of those few portions of the record.

[108] I wish to acknowledge and thank the Applicant, SHRF, and the U of S for their cooperation and patience as we worked to achieve a resolution to this matter.

V. RECOMMENDATIONS

[109] That SHRF should continue to deny access to the withheld portions of the responsive record except for what is already in the public domain. SHRF should release the publicly available information to the Applicant forthwith.

Dated at Regina, in the Province of Saskatchewan, this 8th day of December, 2009.

R. GARY DICKSON, Q.C.
Saskatchewan Information and Privacy Commissioner