

SASKATCHEWAN
OFFICE OF THE
INFORMATION AND PRIVACY COMMISSIONER

REVIEW REPORT LA-2014-002

Saskatoon Regional Health Authority

Summary: An Applicant submitted an access to information request to the Saskatoon Regional Health Authority (SRHA). Initially, SRHA provided the responsive records in part but withheld information pursuant to sections 16(1)(a), 16(1)(b), 16(1)(c), 16(1)(d), 16(3), 18(1)(c)(i), 18(1)(c)(ii), 18(1)(c)(iii) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant requested a review by the Office of the Saskatchewan Information and Privacy Commissioner (OIPC). The OIPC provided notification to both the Applicant and SRHA that it would be undertaking a review. In response, SRHA advised the OIPC that it had decided to release further information to the Applicant and that it was only relying on section 28(1) of LA FOIP to withhold the remaining information. The Commissioner found that SRHA properly withheld some portions of the responsive records under section 28(1) of LA FOIP but improperly withheld other portions. She recommended that SRHA release the portions of the withheld records she found to be improperly withheld under section 28(1) of LA FOIP.

Statutes Cited: *The Local Authority Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. L-27.1, ss. 2(f)(xiii), 12(1)(b), 16(1)(a), 16(1)(b), 16(1)(c), 16(1)(d), 16(3), 18(1)(c)(i), 18(1)(c)(ii), 18(1)(c)(iii), 23(1), 23(1)(b), 23(2), 23(2)(b), 28(1), 51; Alberta's *Freedom of Information and Protection of Privacy Act*, R.S.A 2000, c.F-25, s. 17.

Authorities Cited: Saskatchewan OIPC Review Report LA-2013-003, LA-2013-001, LA-2012-002, LA-2011-003, LA-2011-004, LA-2010-001, LA-2009-002/H-2009-001, LA-2007-002, H-2008-001, F-2013-006, F-2013-004, F-2013-001, F-2006-004, F-2005-006, F-2004-007; Ontario IPC Order MO-1194; Alberta IPC Order F2011-014; British Columbia IPC F14-08.

Other Sources

Cited: Saskatchewan OIPC: *Helpful Tips: OIPC Guidelines for Public Bodies/Trustees in Preparing for a Review.*

I BACKGROUND

[1] The Saskatoon Regional Health Authority (SRHA)¹ received an access to information request on July 7, 2011. The request was for the following: “1) Critical Incident Report for [name of individuals] completed through Adverse Event Management System including root-cause analysis, recommendations and corrective actions. 2) The de-identified report to Sask. Health.”

[2] In a letter dated July 22, 2011, SRHA advised the Applicant that it was extending the time period to respond pursuant to section 12(1)(b) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).²

[3] SRHA provided its section 7 response letter dated September 6, 2011 to the Applicant, stating that some of the information in the responsive records was being withheld:

Please find attached records responsive to your request. Please note that pursuant to section 8 of *The Local Authority Freedom of Information and Protection of Privacy Act* (the Act), some of the information contained in the attached records has been severed. Access to this information is denied pursuant to Sections: 16(1)(a), 16(1)(b), 16(1)(c), 16(1)(d), 16(3), 18(1)(c)(i), 18(1)(c)(ii), 18(1)(c)(iii) and 28(1). Applicable sections have been enclosed for your information.

[4] On October 17, 2011, my office received a request for review dated October 5, 2011 from the Applicant.

[5] In separate letters dated February 21, 2012, we notified both the Applicant and SRHA that my office would be undertaking a review. We requested a submission, records, and

¹Throughout this Review Report, the Saskatoon Regional Health Authority (hereinafter SRHA) will be referred to as SRHA or SHR (which stands for Saskatoon Health Region).

²*The Local Authority Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. L-27.1.

the third party contact information from SRHA, as it had claimed sections 18(1)(c)(i), 18(1)(c)(ii), and 18(1)(c)(iii) of LA FOIP.

- [6] My office received a cover letter dated March 21, 2012 along with the submission, records, and Index of Records (Index) from SRHA. The letter read as follows:

We have included the responsive records provided to [the Applicant] on October 3, 2012. Please note that upon further internal discussions, the original package provided to the applicant on September 6, 2011, was revised and a second release packing including additional information was provided on October 3, 2011. **As such, we have included the revised package in which only Section 28(1) of LA FOIP was applied and all discretionary exemptions were removed** (as referred to in the Applicant's Request for Review dated October 4, 2011).

[emphasis added]

- [7] To further clarify, in its enclosed submission, SRHA stated that the only exemption it was relying on was section 28(1) of LA FOIP as follows:

In consultation with stakeholders within Saskatoon Health Region (SHR), the responsive records were provided to the applicant on September 6, 2011. The following exemptions *from The Local Authority Freedom of Information and Protection of Privacy Act* (the Act) were applied: 16(1)(a), 16(1)(b), 16(1)(c), 16(1)(d), 16(3), 18(1)(c)(i), 18(1)(c)(ii), 18(1)(c)(iii), 28(1). Upon receipt of the responsive records, the applicant contacted SHR expressing concern related to the amount of information redacted from the records.

Upon further consultation and internal discussions, a revised package was provided to the applicant on October 3, 2012. **The only exemption applied in accordance with the Act was 28(1), a mandatory exemption.** SHR officials, including the Director of Privacy and Compliance, met with [the Applicant] on this day and provided them with the package.

[emphasis added]

- [8] As noted above, SRHA was no longer relying on sections 16(1)(a), 16(1)(b), 16(1)(c), 16(1)(d), 16(3), 18(1)(c)(i), 18(1)(c)(ii), and 18(1)(c)(iii) of LA FOIP. It continued to withhold information under section 28(1) of LA FOIP only.

[9] With SRHA's consent, our office shared its submission with the Applicant on or about April 17, 2012.

[10] On July 19, 2013, my office received a letter from the Applicant confirming her interest in proceeding with the review:

We are still very interested in pursuing the information withheld from us by the SRHA, despite their argument in their submission dated March 21, 2012.

We appreciate that information that the SRHA has provided us with thus far. However, we still strongly feel that the "majority of the information redacted in accordance with Section 28(1) related to actions or opinions of a physician" is the actual information that we need and should have access to in order to understand our specific case.

[11] My office proceeded with the review. Enclosed with a letter dated December 30, 2013, my office sent its preliminary analysis, findings, and recommendations to SRHA. We agreed that some information may be withheld, but other portions of the responsive record should be released as did not constitute third party personal information.

[12] SRHA responded in a letter dated February 21, 2014 indicating that "Saskatoon Health Region's position remains the same as outlined in our Submission dated March 20, 2012". As SRHA did not provide our office with anything dated March 20, 2012, my assumption is that it was instead referring to its March 21, 2012 correspondence noted earlier.

[13] On March 3, 2014, my office notified the Applicant that SRHA was not complying with our recommendations. As a result, the Applicant requested that I issue a formal Review Report which I proceeded to do.

II RECORDS AT ISSUE

[14] The Index that was provided to my office (enclosed with its letter dated March 21, 2012) offers the following description of the line items redacted from the responsive records:

| Page Number(s) | Description | Section(s) | Comments |
|-----------------------|---|--|---|
| 2 | Labour Delivery Chain of Communication | 28(1) – Mandatory | Individual's signature |
| 3 | Handwritten notes dated May 5, 2011 | 28(1) – Mandatory, 16(1)(a), 16(1)(b) [sic], 16(3) – Discretionary | Document includes personal information employment information including performance of non-SHR staff, opinions or views of an individual, and views or opinions about an individual. Sections 16(1)(a), 16(1)(b) and 16(3) were applied in error. |
| 5 | Letter to [name of employee] dated February 3, 2011 | 28(1) – Mandatory | Letter includes personal information: employment information including performance of non-SHR staff, personal opinions or views of an individual, and views or opinions about an individual. |
| 8 | Review of Delivery – Page 2 | 28(1) – Mandatory | Document includes personal information: employment information including performance of non-SHR staff, opinions or views of an individual, and views or opinions about an individual. |
| 10 | Review of Delivery | 28(1) – Mandatory | Document includes personal information: employment information including performance of non-SHR staff, opinions or views of an individual, and views or opinions about an individual. |
| 11-12 | Letter to [name of employee] dated February 3, 2011 | 28(1) – Mandatory | Letter includes personal information including but not limited to employment information including performance of non-SHR staff, opinions or views of an individual, and views or opinions about an individual. |
| 13 | Letter to [name of employee] dated February 3, 2011 | 28(1) – Mandatory | Letter includes personal information: employment information of non-SHR staff. |

| | | | |
|-------|---|-------------------|--|
| 14 | Letter to [a third party] dated February 3, 2011 | 28(1) – Mandatory | Letter includes personal information including but not limited to: employment performance of non-SHR staff, opinions or views of an individual, and views or opinions about an individual. |
| 17 | Letter to [name of employee] dated March 10, 2011 | 28(1) – Mandatory | Letter includes personal information: employment information including performance of non-SHR staff, and views or opinions about an individual. |
| 18-19 | Letter to [name of employee] dated June 16, 2011 | 28(1) – Mandatory | Letter includes personal information including but not limited to: individual's signature, employment performance of non-SHR staff, opinions or views of an individual, and correspondence sent by an individual to a local authority in confidence. |
| 23 | Review Process | 28(1) – Mandatory | Document includes personal information: employment information including performance of non-SHR staff and views or opinions about an individual. |
| 24 | Action Plan | 28(1) – Mandatory | Document includes personal information including but not limited to: employment performance of non-SHR staff, opinions or views of an individual, views or opinions about an individual. |
| 28 | Action Plan | 28(1) – Mandatory | Document includes personal information including but not limited to: employment performance of non-SHR staff, opinions or views of an individual, views or opinions about an individual. |
| 29 | Review Process | 28(1) – Mandatory | Document includes personal information: employment information including performance of non-SHR staff and views or opinions about an individual. |

III ISSUES

1. **Did the Saskatoon Regional Health Authority properly withhold information pursuant to section 16(3) of *The Local Authority Freedom of Information and Protection of Privacy Act*?**
2. **Did the Saskatoon Regional Health Authority properly apply section 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act*?**

IV DISCUSSION OF THE ISSUES

[15] SRHA is a “local authority” as defined by section 2(f)(xiii) of LA FOIP:³

2 In this Act:

...

(f) “**local authority**” means:

...

(xiii) a regional health authority or an affiliate, as defined in *The Regional Health Services Act*;

1. **Did the Saskatoon Regional Health Authority properly withhold information pursuant to section 16(3) of *The Local Authority Freedom of Information and Protection of Privacy Act*?**

[16] In its letter dated March 21, 2012 to my office, SRHA advised us that it was only relying on section 28(1) of LA FOIP and that it was no longer relying on any of the other exemptions it had cited originally.

[17] My office proceeded with completing a preliminary analysis on SRHA’s application of section 28(1) of LA FOIP to withhold the information in question. We provided SRHA

³Also, former Commissioner Dickson found SRHA to be a local authority in Office of the Saskatchewan Information and Privacy Commissioner (hereinafter SK OIPC) Review Reports LA-2013-003 at [16] and H-2008-001 at [16], available at: www.oipc.sk.ca/reviews.htm.

with this preliminary analysis which included preliminary findings and recommendations along with a letter dated December 30, 2013.

- [18] SRHA responded by way of letter dated February 21, 2014. Its letter quoted a paragraph from the background section of my office's preliminary analysis as follows:

*As you have indicated in your analysis "some of the responsive records appear to be privileged pursuant to section **10 of The Evidence Act**. **The Evidence Act appears to enable SHR to withhold such records from being released in legal proceedings.** Therefore, it is impressive how forthcoming SHR was in releasing these records, in part to the Applicant." **It is the Saskatoon Health Region's opinion that we have exceeded the legal minimum regarding access to this record.***

[emphasis added]

- [19] Based on SRHA's response quoted above, it appeared to my office that SRHA was again raising the discretionary exemption, section 16(3) of LA FOIP. Section 16(3) of LA FOIP states as follows:

16(3) A head may refuse to give access to any report, statement, memorandum, recommendation, document, information, data or record, within the meaning of **section 10 of The Evidence Act**, that, pursuant to that section, is not admissible as evidence in any legal proceeding.

[emphasis added]

- [20] If SRHA intended to raise this discretionary exemption, section 16(3) of LA FOIP, it would be contrary to what it had stated in its submission dated March 21, 2012. In its March 21, 2012 submission, as quoted earlier, SRHA stated it was only relying on section 28(1) of LA FOIP.

- [21] It has been my office's practice not to consider late raised discretionary exemptions unless the public body can demonstrate that this will not prejudice the Applicant.⁴ SRHA did not demonstrate this. Therefore, I will not consider it.

⁴This practice has been made known in several of our office's Review Reports including Review Reports F-2004-007 at [16], F-2005-006 at [6], F-2006-004 at [18], F-2013-001 at [63], F-2013-004 at [48], F-2013-006 at [21], LA-2007-002 at [22], LA-2011-003 at [17], LA-2011-004 at [8], available at: www.oipc.sk.ca/reviews.htm. This

[22] Further, if SRHA had intended to rely on section 16(3) of LA FOIP, then it should have provided arguments and/or evidence of its application in its submission to meet the burden of proof pursuant to section 51 of LA FOIP.

[23] SRHA did not offer anything persuasive to meet the burden of proof for its reliance on section 16(3) of LA FOIP.

[24] My office advised SRHA in an email dated March 5, 2014 of the following:

SHR did not cite section 16(3) of LA FOIP. Further, SHR did not provide any arguments to our office in its submission to rely on section 16(3) for our office's formal consideration. Without any arguments, SHR does not meet the burden of proof as set out in section 51 of LA FOIP for its reliance upon section 16(3):

51 In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned.

[25] I will now proceed to consider the application of section 28(1) of LA FOIP to the withheld information in question as it is the only exemption at issue.

2. Did the Saskatoon Regional Health Authority properly apply section 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act*?

[26] The content of the responsive records involves matters involving employees, none of which include the Applicant. The different employees include a physician and other staff members. Often, I will refer to those individuals generally as employees, but in other circumstances, use job titles where appropriate.

[27] Section 28(1) of LA FOIP states the following:

28(1) No local authority shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 29.

[28] In order for section 28(1) to apply, the withheld portions of the records must constitute third party “personal information” as defined by section 23(1) of LA FOIP. Section 23(1) of LA FOIP provides 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;

(c) information that relates to health care that has been received by the individual or to the health history of the individual;

(d) any identifying number, symbol or other particular assigned to the individual;

(e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;

(f) **the personal opinions or views of the individual except where they are about another individual;**

(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;

(h) **the views or opinions of another individual with respect to the individual;**

(i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;

(j) information that describes an individual’s finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

[emphasis added]

[29] I must also take into consideration what section 23(2) of LA FOIP states is not considered personal information:

23(2) “Personal information” does not include information that discloses:

...

(b) the **personal opinions or views of an individual employed** by a local authority **given in the course of employment, other than personal opinions or views with respect to another individual;**

[emphasis added]

[30] I am also mindful of the distinction between the personal opinions or views of an individual, the personal opinions or views of employees given in a non-personal work capacity, and personal opinions or views with respect to another individual. If the personal opinion or views are about a person, then it may qualify as personal information of the subject individual. Former Saskatchewan Information and Privacy Commissioner Gary Dickson, Q.C. (Commissioner Dickson) stated the following regarding opinions or views in his Review Report F-2006-004:

[43] The Alberta Annotated FOIP Act, page 5-1-10, characterizes an “opinion” as follows:

An “opinion” is a belief or assessment based on grounds short of proof; a view held as probable. An “opinion” is subjective in nature, and may or may not be based on fact. An example of an “opinion” would be a belief that a person would be a suitable employee, whether or not the opinion is based on the person’s employment history (Order 97-020 [129]). Under section 1(n)(viii) anyone else’s opinions about an individual will be that individual’s personal information (Order 97-002 [41-45]). However, in order for information to be an opinion about an individual it must be connected with that individual (Order 98-001 [42]).

[44] The phrasing “views or opinions” appears in different parts of section 24 of the Act [24(1)(f), 24(1)(h) & 24(2)(c)]. Clauses 24(1)(f) “the personal opinions or views of the individual except where they are about another individual”, (h) “the views or opinions of another individual with respect to the individual” and 24(2)(c) “the

personal opinions or views of an individual employed by a government institution given in the course of employment, other than personal opinions or views with respect to another individual” differ in meaning as follows:

a. Whether or not you work for a public body, if you have an opinion or view about another person, that view or opinion material is the personal information of the data subject, not the author; and

b. If you are not an employee of a public body, your personal opinion or view (not involving another individual) is your own personal information. However, as per subsection 24(2)(c), if offered by a government employee in the course of employment, these will not be considered the employee’s personal information. This is due to the fact that the individual is only offering his/her opinion or view as part of his/her employment responsibilities, not in a personal capacity.

[emphasis added]

[31] If the information in question pertains to the performance of employment duties, it is generally not considered personal information. However, some employment or work-related information can constitute personal information in some cases. In Review Report LA-2009-002/H-2009-001, Commissioner Dickson noted the following:

[170] I must next determine if records related to performance investigations constitute employment history for purposes of 23(1)(b) of LA FOIP.

[171] Ontario Reconsideration Order R-980015 addresses what does and does not constitute an employee’s personal information as follows:

A wide range of employment or work-related information is captured by the definition of personal information, including records relating to such things as job competitions (Orders 11, 20, 43, 97, 99, 159, 170, P-222, P-230, P-282, M-7, M-99 and M-135), information generated in the course of investigations of improper conduct or disciplinary proceedings (Orders 165, 170, P-256, P-326, P-447, P-448, M-120, M-121 and M-122), and specific details of individual employment arrangements with an institution (Orders 61, 170, 183, P-244, P-380, P-432, M-18, M-23, M-26, M-35, M-102, M-129 and M-141).

...

It is apparent from various provisions of the Act that certain employment and other work-related information is indeed, intended to fall with the scope of personal information definition. **For example, paragraph (b) of the definition in section 2(1) specifically provides that an individual’s employment and education history is considered to be personal information. This is also reflected in the presumption against disclosure of such information set out at section 21(3)(d). Similarly, certain evaluative information in a personnel**

context is considered to be the personal information of the individual to whom it relates and is protected from disclosure by the presumption at section 21(3) of the Act.

...

The statutory notion of employment history appears to relate to what might be referred to as “personnel matters” and should not, in my view, be construed to include every action of an individual employee which might cumulatively be said to constitute that employee’s “history”.

[172] I also considered British Columbia’s Commissioner in Order 01-15 in which employment history is described as follows:

[41] Section 22(3)(d), in relevant part, protects information related to the “employment history” of a third party. In my view, someone’s “employment history” includes information about her or his work record and reasons for leaving a job (see, for example, Order 00-53). **It also includes information about disciplinary action taken against an employee** (see, for example, Order No. 62-1995, [1995] B.C.I.P.C.D. No. 35; and Order 00-13, [2000] B.C.I.P.C.D. No. 16). I see nothing in the withheld portions of records 5 and 7 that could even remotely be construed as information “that relates to employment ... history” of any third party.

[42] The only withheld item in record 5 which is connected to anyone’s employment in any way is the first severed line, a comment on a Ministry employee’s efforts in dealing with the applicant. **It does not relate to the employee’s work history. It merely records action taken by that employee - information as to what was done and by whom.** Section 22(3)(d) does not apply to it. The withheld information in the middle of record 7 describes a Ministry employee’s telephone call with the applicant and another employee’s comment on a work-related decision by the first employee. This information does not relate to a third party’s employment history. I find that it also does not fall under s. 22(3)(d).

[173] The Assistant Commissioner’s comments in Ontario Order PO-1772 are also helpful as follows:

The Ministry and the appellant both submit that the records contain the appellants personal information. I concur.

...

In support of its position, the Ministry relies on the findings of former Assistant Commissioner Irwin Glasberg in Order P-721, where he found that:

Previous orders have held that information about an employee does not constitute that individual’s personal information where the information relates to the individual’s employment responsibilities or position. Where, however,

the information involves an evaluation of the employee's performance or an investigation of his or her conduct, these references are considered to be the individual's personal information.

All of the records that remain at issue in this appeal were prepared by Correctional Officers during the course of discharging their professional responsibilities as employees of the Ministry. Previous orders have determined that references to a government employee contained in records created in the normal course of discharging employment responsibilities is not about the individual employee, and does not qualify as the employee's personal information under section 2(1) of the Act (see Orders 139, 194, P-157, P-257, P-326, P-377, P-477, P-470, P-1538 and M-82 and Reconsideration Order R-980015). However, as the Ministry points out in its representations, **where the information is associated with the employee's performance or conduct, other orders have determined that this information is about the individual employee, and qualifies as the employee's personal information** (see Orders 165, 170, P-256, P-326, P-447, P-448, M-120, M-121 and M-122).⁵

[emphasis added]

[32] As noted above, some employment or work-related information may qualify as personal information of an employee if it involves an evaluation of the employee's performance or an investigation into his or her conduct. Such information would be information of a personal nature of the employee in question.

[33] One of the individuals mentioned in the responsive records is a physician. I need to determine if a physician with practicing privileges would qualify as an employee of the SRHA for purposes of LA FOIP.

[34] SRHA took the position that the physician is not a SRHA employee. SRHA's submission states the following:

... The **physician is not a Saskatoon Health Region employee**, however, does have practicing privileges within the Region. Given the physician is not an employee, we were not able to apply Section 10(g) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* that allows the local authority discretion to release information related to employee performance.

[emphasis added]

⁵SK OIPC Review Report LA-2009-002/H-2009-001, available at: www.oipc.sk.ca/reviews.htm.

[35] It appears that SRHA is arguing that it cannot release certain information pertaining to the physician because the physician is not a SRHA employee. Even if I found that was the case, what a physician generally does in a professional or business capacity would not constitute personal information of that individual as is not personal in nature.

[36] In Review Report LA-2013-001, Commissioner Dickson stated the following:

[58] It appears that many of the individuals referenced in the record were employees of RQRHA. **There are also a number of medical staff who presumably were contractors of RQRHA with privileges to practice medicine in the facilities of RQRHA.** I considered the definition of “employee” in Review Report LA-2004-001 at [38] to [39] and found that it did not include a volunteer for a school division. I have not previously considered whether “**employee” of a regional health authority** would include a **physician with privileges to work in the facilities** of that authority. Mindful of section 10 of *The Interpretation Act* and the modern rule of statutory interpretation discussed earlier in this Report, **I find that a physician with privileges working in a facility of a regional health authority is captured by the term “employee” for purposes of LA FOIP.**⁶

[emphasis added]

[37] Therefore, as with the previous case noted above, I find that the physician in question is an employee for the purposes of LA FOIP.⁷

[38] Below is a summary of my review of the severed portions of the records in question and recommendations regarding whether or not SRHA should release.

Page 2

[39] Page 2 of the responsive record includes a signature of a registered nurse. The signature appears to be that of an employee of the SRHA.

⁶SK OIPC Review Report LA-2013-001, available at: www.oipc.sk.ca/reviews.htm.

⁷My finding is based on a balance of probabilities as SRHA provided little submission regarding the question. Also see SK OIPC Review Report LA-2010-001 at [39] to [44] for definitions of employee, available at: www.oipc.sk.ca/reviews.htm.

[40] In Review Report LA-2013-003, Commissioner Dickson stated that a document containing thirteen signatures of University of Saskatchewan employees did not contain personal information:

[97] The letter is one page in length. **The enclosed Consensus Statement is six pages in length and bears the signatures of 13 doctors who I presume are employees at the U of S.** The letterhead is that of the U of S.

...

[108] The Consensus Statement was signed by several individuals, all of which appear to be employees of a department at the U of S. The contents of the Consensus Statement describe the functions of the department from which the employees are based. The Consensus Statement discusses how the location of the Children's Hospital of Saskatchewan will impact those functions.

[109] Based on the contents of the Consensus Statement, it appears that the information is not the personal opinion or view of any individuals. **The contents of the Consensus Statement appear to be the collective opinion or view of a department at the U of S that was given in the course of employment by several employees.** In other words, the **employees who signed** the Consensus Statement appear to be speaking on behalf of its department, not on the behalf of themselves personally.

[110] **Therefore, this letter and the Consensus Statement do not contain personal information...**

[emphasis added]

[41] Similarly, in Order MO-1194 from the Ontario Office of the Information and Privacy Commissioner (IPC), the former Assistant Commissioner stated that a signature on records created in a professional or official government context would not be "about the individual" as follows:

In cases **where the signature is contained on records created in a professional or official government context, it is generally not "about the individual" in a personal sense, and would not normally fall within the scope of the definition.** (See, for example, Order P-773, which dealt with the identities of job competition interviewers, and Order P-194 where handwritten comments from trainers were found not to qualify as their personal information.)⁸

[emphasis added]

⁸Ontario Office of the Information and Privacy Commissioner (hereinafter IPC) Order MO-1194 at p. 2, available at: www.ipc.on.ca/english/decisions-and-resolutions/.

[42] Further, in Order F2011-014, an adjudicator from the Alberta IPC, found that the signature of an employee of a public body is also not personal information:

[para 10] In Order F2008-028, the Adjudicator reviewed the decisions of this office that address information about individuals acting in an official capacity, and concluded that information about individuals acting in an official or professional capacity is not personal information to which section 17 of the FOIP Act⁹ can apply. He concluded the following:

In many of the records at issue, the Public Body applied section 17 of the Act to the names, job titles and/or signatures of individuals who sent or received correspondence, or who acted in some other way, in their capacities as politicians, employees of the Public Body, other government officials, or representatives of other bodies, businesses and organizations...

I find that section 17 does not apply to the foregoing names, job titles and signatures. First, in the case of government officials and employees (although not individuals associated with other organizations and businesses), section 17(2)(e) indicates that disclosure of their job titles and positions (i.e., employment responsibilities) is expressly not an unreasonable invasion of their personal privacy (Order F2004-026 at para. 105). Second, many previous orders of this Office have made it clear that, as a general rule, disclosure of the names, job titles and signatures of individuals acting in what I shall variably call a “representative”, “work-related” or “non-personal” capacity is not an unreasonable invasion of their personal privacy. I note the following principles in particular:

...

The present inquiry provides a useful distinction. I concluded above that disclosure of the names, job titles and other identifying information of members of the general public – who wrote correspondence or otherwise interacted with the Public Body in their private or personal capacities – would be an unreasonable invasion of their personal privacy. **By contrast, when the records at issue merely reveal that individuals acted in their work-related or non-personal capacities, or did something as representatives of a public body, business or organization, section 17 does not apply to their names, job titles or signatures.**

[para 11] In Order F2009-026, I said:

⁹The relevant portions of section 17 of Alberta’s *Freedom of Information and Protection of Privacy Act*, R.S.A. 2009, c. F-25 states: **17(1)** The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy. **(2)** A disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy if... **(e)** the information is about the third party’s classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council,

If information is about employees of a public body acting in a representative capacity the information is not personal information, as the employee is acting as an agent of a public body. As noted above, the definition of “third party” under the Act excludes a public body. In Order 99-032, the former Commissioner noted:

The Act applies to public bodies. However, public bodies are comprised of members, employees or officers, who act on behalf of public bodies. A public body can act only through those persons.

In other words, the actions of employees acting as employees are the actions of a public body. Consequently, information about an employee acting on behalf of a public body is not information to which section 17 applies, as it is not the personal information of a third party. If, however, there is information of a personal character about an employee of a public body, then the provisions of section 17 may apply to the information. I must therefore consider whether the information about employees in the records at issue is about them acting on behalf of the Public Body, or is information conveying something personal about the employees.¹⁰

[emphasis added]

[43] I am of similar view. The signatures of employees of a public body provided in a work context, such as the SRHA, would be captured by section 23(2) of LA FOIP. In other words, signatures of employees of a public body are not personal information if offered in a work-related professional capacity.

[44] The employee, the registered nurse, apparently signed page 2 in the course of completing employment duties. Therefore, I find it is not personal information pursuant to section 23(1) of LA FOIP and should be released to the Applicant.

[45] I find that SRHA improperly withheld the employee’s signature that appears on page 2 of the responsive record.

¹⁰Alberta IPC Order F2011-014, available at: www.oipc.ab.ca/pages/OIP/default.aspx.

Page 3

[46] Page 3 is composed of handwritten notes and is dated May 5, 2011. SRHA did not advise my office of the author's name. Most of the information was released to the Applicant but three portions were withheld under section 28(1) of LA FOIP.

[47] As stated earlier, section 23(2)(b) of LA FOIP describes what is not personal information:

23(2) "Personal information" does not include information that discloses:

...

(b) the personal opinions or views of an individual employed by a local authority given in the course of employment, **other than personal opinions or views with respect to another individual;**

[emphasis added]

[48] I need to determine if any of the information severed is expressed personal opinions or views with respect to an individual. If it is, then such information would qualify as personal information of the subject individual to whom the opinion or view is about or pertains.

[49] The first withheld portion is composed of two words and one symbol. In terms of linking to an identifiable individual, the only reference on the page is to "he". Accordingly, I find insufficient evidence to find it constitutes personal information of any particular individual in question. I recommend release of this severed portion of the record.

[50] The second portion appears to be an observation of how an employee acted in a work-capacity or situation. Such information is not a personal opinion or view of an individual so should be released.

[51] The third withheld portion is composed of two words and a statement followed by what appears to be five words, only three of which are legible. The statement appears to be a conclusion which is not explicitly linked to any particular individual. The remaining

portions do not contain anything of a personal nature. I find that none of these portions contain personal information of an identifiable individual.

[52] Therefore, I find all portions of Page 3 were improperly withheld under section 28(1) of LA FOIP and all should be released.

Page 5

[53] There are only three portions of the record labelled page 5 that were severed under section 28(1) of LA FOIP.

[54] The first portion is the second sentence of the third paragraph of the letter. The sentence describes the action of two employees and why. I find that the actions described were in the work context so do not constitute personal information. However, the 'why' is an expressed personal opinion or view about an individual. Therefore, I find the first part of this sentence to be improperly withheld under section 28(1) of LA FOIP. However, the second part should continue to be withheld.

[55] The second portion that was withheld is the last paragraph of the same letter. The first sentence of the paragraph speaks to work schedules. In Review Report LA-2012-002, Commissioner Dickson found that the record detailed shifts worked by employees of the Kelsey Trail Regional Health Authority was not personal information pursuant to section 23(1)(b) of LA FOIP.¹¹ However, in this present case, there is a personal element to the reference. I therefore find it should be withheld as personal information of a third party.

[56] The second sentence of the second severed portion is about employee professional development that would reveal something of a personal nature of the employee. Therefore, I find that this information would also qualify as personal information pursuant to section 23(1)(b) of LA FOIP. It should therefore continue to be withheld.

¹¹SK OIPC Review Report LA-2012-002 at [26] and [107], available at: www.oipc.sk.ca/reviews.htm.

[57] The third and final sentence in the second severed portion states that the employee is aware of a particular situation but as it pertains to employee performance, I find constitutes personal information pursuant to section 23(1) of LA FOIP. I recommend that this line item continue to be withheld.

[58] The third portion of severed information on page 5 is handwritten notes that appear at the bottom right hand corner of the page. The handwritten notes do not link back to an identifiable individual. The remarks appear to be about work-related processes. Therefore, this information would not qualify as personal information of any identifiable individual so should be released.

Pages 8 and 10

[59] Pages 7 to 10 are summaries of discussion between SRHA employees. Pages 7 and 9 were apparently released in full. Pages 8 and 10 were partially severed.

Page 8

[60] Page 8 includes three severed sections. The first severed section is an employee's comment regarding a work situation. This type of information would not be considered personal information as it reveals nothing of a personal nature. It should be released.

[61] The last line of the second severed portion on page 8 is related to professional opinion pertaining to work function so should be released. However, the other two lines of this portion of the record and the third severed section (the last sentence on the page) involve feelings of different individuals.

[62] In British Columbia IPC Order F14-08, one individual's feelings related to another person was determined to constitute the other person's personal information as follows:

[10] **FIPPA defines personal information as recorded information about an identifiable individual other than contact information.** Based on my review of the withheld information, I conclude it is the personal information of the caregiver for the

purpose of s. 22. This means that the burden of proof is on the applicant to prove that disclosure of the information would not unreasonably invade the caregiver's personal privacy.

[11] The definition of personal information makes it possible for information to be the personal information of more than one person. In this case, some of the withheld information is also the personal information of the applicant and/or the applicant's mother. In particular, **the withheld information in the incident report is the personal information of the applicant's mother because the information is about the caregiver's feelings related to the applicant's mother.** The first piece of withheld information in the follow-up report contains the **caregiver's feelings in relation to the applicant and his mother, so it is the personal information of the applicant's mother and the applicant as well as the caregiver.** The second piece of information in the follow-up report is not information about the applicant or his mother; it is solely the personal information of the caregiver.¹²

[emphasis added]

[63] As feelings are personal in nature, as consistent with the above, I find those references on page 8 should be withheld as personal information under section 28(1) of LA FOIP.

Page 10

[64] There are four paragraphs on page 10 that were withheld pursuant to section 28(1) of LA FOIP.

[65] The first withheld paragraph, one sentence, is personal in nature as it pertains to an employee's feelings and understanding. As such, it constitutes personal information of the employee in question. SRHA should continue to withhold pursuant to section 28(1) of LA FOIP.

[66] The first sentence of the second withheld paragraph is similar to the above. As such, I find this to be personal information of the employee in question that should also be withheld pursuant to section 28(1) of LA FOIP.

¹²British Columbia IPC Order F14-08, available at: www.oipc.bc.ca/rulings/orders.aspx.

- [67] The remainder of the second withheld paragraph appears to be the employee's response to hypothetical situations posed. Such information could be evaluative in nature, and therefore, is personal information of the employee pursuant to section 23(1)(b) of LA FOIP. It should continue to be withheld.
- [68] The third withheld paragraph is personal information as it deals with an employee's performance and personal opinions or views about this individual. I find that this entire paragraph constitutes third party personal information so should be withheld.
- [69] The first sentence in the last withheld paragraph on this page discusses only procedure and reveals no personal information. It should be released.
- [70] The second and third sentences of this paragraph discuss work schedules. However, as with the last example, as personal inferences may be made, constitutes personal information and should continue to be withheld.
- [71] The fourth sentence of this paragraph deals with employee professional development. In the specific context, it may reveal something of a personal nature of an employee. Therefore, I find it constitutes personal information of a third party so should be withheld under section 28(1) of LA FOIP.

Pages 11 and 12

- [72] Pages 11 and 12 constitute a letter. Four paragraphs were withheld on page 11. The fourth paragraph from page 11 continues onto page 12 where the remainder is also withheld. The content pertains to employee performance and in some cases, describes employees' feelings. As such, I recommend that all four paragraphs be withheld in full as constitute third party personal information.

Page 13

[73] As stated earlier, information pertaining to work schedules is generally not the employee's personal information pursuant to section 23(1) of LA FOIP. However, I find that the information that was severed on page 13 should continue to be withheld as could reveal something of a personal nature about the data subject in question.

Page 14

[74] All the severed portions on page 14 appear to be about employee professional development so should continue to be withheld under section 28(1) of LA FOIP.

Page 17

[75] The first sentence and paragraph of this withheld portion should be released as contains no personal content. The first sentence of the fourth paragraph should also be released as is a reference to a work schedule. The remaining withheld portions however should still be withheld as reveal something of a personal nature. This includes references to employee performance and feelings expressed.

Pages 18 and 19

[76] Pages 18 and 19 constitute a letter. I find that these pages were appropriately severed because in the context, pertains to an employee's performance. Thus, I find that the severed information is personal information pursuant to section 23(1)(b) of LA FOIP. SRHA should continue to withhold all severed portions but not the signature on page 19 for the reasons noted earlier.

Pages 23 and 29

[77] Pages 23 and 29 are identical pages. The same sentence was severed from these two pages. Though generalized, as that statement relates to employee performance that may

otherwise be linked back to an identifiable individual, I recommend it be withheld pursuant to section 28(1) of LA FOIP.

Pages 24 and 28

[78] Pages 24 and 28 are nearly identical pages with the same wording withheld on both. The statement pertains to general workplace scenarios. It is not linked to any identifiable individual and is not personal in nature. Therefore, I find that this sentence was inappropriately withheld under section 28(1) of LA FOIP. I recommend its release.

V FINDINGS

[79] I find that the Saskatoon Regional Health Authority cannot rely on section 16(3) of *The Local Authority Freedom of Information and Protection of Privacy Act* to withhold any of the information in question.

[80] I find that in some cases, the Saskatoon Regional Health Authority properly applied section 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act*.

[81] I find that in some cases, the Saskatoon Regional Health Authority did not properly apply section 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act*.

VI RECOMMENDATIONS

[82] I recommend that the Saskatoon Regional Health Authority continue to withhold those line items that constitute third party personal information as outlined in this Review Report.

[83] I recommend that the Saskatoon Regional Health Authority release those line items that I found did not constitute third party personal information to the Applicant as outlined in this Review Report.

Dated at Regina, in the Province of Saskatchewan, this 28th day of April, 2014.

DIANE ALDRIDGE
Acting Saskatchewan Information and
Privacy Commissioner