

**SASKATCHEWAN  
INFORMATION AND PRIVACY COMMISSIONER**

**REVIEW REPORT LA-2014-004**

**University of Regina**

**Summary:**

In March 2013, an Applicant submitted four access to information requests to the University of Regina (U of R). The U of R advised the Applicant that it was withholding the records responsive to all four access to information requests pursuant to subsections 14(1)(d) and 16(1)(d) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant proceeded to request a review by the Office of the Information and Privacy Commissioner (OIPC) on all four matters. Upon review, the Commissioner found that the U of R did not establish that subsection 14(1)(d) of LA FOIP applied to the record. Further, the Commissioner found that the U of R did not establish that subsection 16(1)(d) of LA FOIP applied to a portion of the record. However, the Commissioner found that subsection 16(1)(d) of LA FOIP applied to the remainder of the record. The Commissioner recommended the U of R continue to withhold the portion of the record found to qualify for subsection 16(1)(d) of LA FOIP and release the remainder of the record after redacting the personal information of other individuals.

**I BACKGROUND**

- [1] On March 18, 2013 the University of Regina (U of R) received two access to information requests for the following:

*Access to information request #2013-05:*

...I would like to know the following, was [Applicant] discussed or mentioned at any point during this meeting [December 12, 2012]? And, was anything discussed in relation to my accommodations and restrictions during this meeting? Why were all nursing advisors present except [Applicant]?

*Access to information request #2013-06:*

On March 11<sup>th</sup>, there was another Nursing Update...

- 1) Will there be discussions about [Applicant]?
- 2) Will there be discussions about [Applicant's] accommodation & restrictions?
- 3) Will [name of union] be present?

- [2] On April 17, 2013 the U of R received two additional access to information requests for the following:

*Access to information request #2013-10:*

I would like all notes from all attendees at this meeting [March 21, 2013].

*Access to information request #2013-11:*

I am requested [sic] all meeting and working notes from all attendees at this meeting that was held in the morning of April 9<sup>th</sup>, 2013.

- [3] In four letters dated May 17, 2013 the U of R responded to all four access to information requests made by the Applicant advising the Applicant that records were being withheld in full pursuant to subsections 14(1)(d) and 16(1)(d) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [4] On August 21, 2013 my office received four Requests for Review from the Applicant.
- [5] In a letter dated September 25, 2013 my office notified both parties of its intention to conduct reviews of all four matters. My office requested the U of R provide a copy of the record, an Index of Records (Index) and submission in support of the subsections relied on for all four reviews.
- [6] On December 2, 2013 my office received a copy of the record and Index from the U of R for all four reviews. Its submission, which addressed all four reviews, was received on January 16, 2014. No submission was received from the Applicant.

## II RECORDS AT ISSUE

[7] The record is 40 pages constituting notes taken during the meetings responsive to the Applicant's access to information requests.

## III DISCUSSION OF THE ISSUES

[8] The U of R is a local authority pursuant to subsection 2(f)(xii) of LA FOIP.

### 1. Does subsection 14(1)(d) of LA FOIP apply?

[9] Subsection 14(1)(d) of LA FOIP is a discretionary exemption and provides:

14(1) A head may refuse to give access to a record, the release of which could:

...

(d) be injurious to the local authority in the conduct of existing or anticipated legal proceedings;

[10] The U of R applied subsection 14(1)(d) of LA FOIP to all 40 pages of the record.

[11] The following criteria must be met in order for subsection 14(1)(d) of LA FOIP to apply:

- i. Do the proceedings qualify as legal proceedings for the purposes of LA FOIP?
- ii. Could disclosure of withheld records be injurious to the local authority in the conduct of existing or anticipated legal proceedings?

(Review Report LA-2013-001 at [22])

#### *i. Do the proceedings qualify as legal proceedings for the purposes of LA FOIP?*

[12] *Legal proceedings* are proceedings governed by rules of court or rules of judicial or quasi-judicial tribunals that can result in a judgment of a court or a ruling by a tribunal. Legal proceedings include all proceedings authorized or sanctioned by law, and brought

or instituted in a court or legal tribunal, for the acquiring of a right or the enforcement of a remedy (Review Report LA-2013-001 at [25]).

[13] In the U of R's submission it indicated that the legal proceeding in this case was a union grievance proceeding. Union grievances involve arbitration proceedings which will have the effect of determining the rights of the parties involved and may result in remedies or sanctions against the U of R or its employees under *The Trade Union Act* (Review Report LA-2013-001 at [21] and [29] to [31]). Therefore, I find that the matter involves a legal proceeding for purposes of subsection 14(1)(d) of LA FOIP.

*ii. Could disclosure of withheld records be injurious to the local authority in the conduct of existing or anticipated legal proceedings?*

[14] The U of R confirmed for my office during the review that the legal proceedings were still ongoing.

[15] In the U of R's submission it asserted that disclosure of the records would negatively impact the U of R's ability to have an impartial and fair adjudication during the union grievance proceedings. However, this argument is not persuasive. If there were concerns or objections to the admissibility of any records in the union grievance proceeding, such concerns could be argued before that tribunal. If a record is prejudicial to the U of R's position it would have the usual opportunity to make a submission to the tribunal who will then make a determination as it determines appropriate. In other words, there is a process in place to address the types of injury claimed by the U of R.

[16] Therefore, I find that the U of R has not shown that release of pages one through 40 would be injurious to the U of R in the union grievance proceeding. As such, subsection 14(1)(d) of LA FOIP cannot be found to apply to pages one through 40.

**2. Does subsection 16(1)(d) of LA FOIP apply?**

[17] Subsection 16(1)(d) of LA FOIP is a discretionary exemption and provides:

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

...

(d) plans that relate to the management of personnel or the administration of the local authority and that have not yet been implemented;

[18] The U of R applied subsection 16(1)(d) of LA FOIP to all 40 pages.

[19] Subsection 16(1)(d) of LA FOIP is intended to cover plans relating to the internal management of local authorities, including information about the relocation or reorganization of departments and agencies. The provision applies only within a limited timeframe. Once a plan has been implemented, the information relating to it can no longer be withheld under this exemption (Service Alberta, *FOIP Guidelines and Practices*, 2009 at p. 181).

[20] The test for subsection 16(1)(d) of LA FOIP is as follows:

- i. The record must contain a plan(s); and
- ii. The plan(s) must relate to:
  - a. the management of personnel; or
  - b. the administration of the local authority; and
- iii. The plan(s) must not yet have been implemented by the local authority.

***i. The record must contain a plan(s)***

[21] A plan is a formulated and detailed method by which a thing is to be done, a design or scheme (BC IPC Order 00-039 at p. 9).

[22] Pages one through 13 do not appear to contain a plan(s). These pages contain the opinions, feelings and thoughts of employees. As pages one through 13 do not contain a plan(s) I find that they do not meet the first part of the test. The U of R should release these pages with any personal information of the employees severed.

[23] The remaining pages, 14 through 40, appear to contain a plan(s). The notes refer to different staffing requirements and costs for different positions. Therefore, I find that pages 14 through 40 meet the first part of the test.

*ii. The plan(s) must relate to:*

*a. the management of personnel; or*

*b. the administration of the local authority*

[24] The U of R asserted in its submission that some of the notes taken during the meeting of March 11, 2013 did not relate to the Applicant and involved personnel matters such as placement of new positions, supervision of staff and staffing requirements. The U of R also indicated that some of the notes taken during the meetings of March 21, 2013 and April 9, 2013 pertained to the union grievance, accommodation of the Applicant and return to work options.

[25] The following definitions apply:

*Management of personnel* refers to all aspects of the management of human resources of a public body that relate to the duties and responsibilities of employees. This includes staffing requirements, job classification, recruitment and selection, employee salary and benefits, hours and conditions of work, leave management, performance review, training, separation and layoff.

*Administration of a public body* comprises all aspects of a public body's internal management, other than personnel management, that are necessary to support the delivery of programs and services. Administration includes business planning, financial operations, and contract, property, information, and risk management.

*Implementation* means the point when the implementation of a decision begins. For example, if a public body decides to go forward with an internal budget cut or restructuring of departments, implementation commences when this plan of action is communicated to its organizational units.

(Service Alberta, *FOIP Guidelines and Practices, 2009* at pp. 181 to 182)

[26] The content of pages 14 through 40 appear to refer to the management of personnel. Therefore, I find that pages 14 through 40 meet the second part of the test.

*iii. The plan(s) must not yet have been implemented by the local authority*

[27] The U of R confirmed for my office during the course of the reviews that the plans had not yet been implemented. Therefore, pages 14 through 40 meet the third part of the test and as such, subsection 16(1)(d) of LA FOIP applies to these pages.

**IV FINDINGS**

[28] I find that the U of R did not establish that subsection 14(1)(d) of LA FOIP applied to pages one through 40. Further, the U of R did not establish that subsection 16(1)(d) of LA FOIP applied to pages one through 13.

[29] I find that the U of R did establish that subsection 16(1)(d) of LA FOIP applied to pages 14 through 40.

**V RECOMMENDATIONS**

[30] I recommend that the University of Regina sever any personal information in pages one through 13 and release the remainder of pages one through 13.

[31] I recommend that the University of Regina continue to withhold pages 14 through 40.

Dated at Regina, in the Province of Saskatchewan, this 21<sup>st</sup> day of August, 2014.

RONALD J.KRUZENISKI, Q.C.  
Saskatchewan Information and Privacy  
Commissioner