

LA FOIP 101

The Basic for Cities, Towns, Municipalities, etc.

Melanie Coyle & Kayla Oishi, Analysts, IPC
Steven Dribnenki, Policy and Legal Advisor, SUMA



Office of the
Saskatchewan Information
and Privacy Commissioner

What We'll Look At

- What is LA FOIP?
- What is a Local Authority?
- Who is the “head”? How to designate a head
- What types of records does LA FOIP apply to?
- Access
- Privacy
- The IPC
- How other Acts interplay with LA FOIP
- Resources and Where to Go for Help

What is LA FOIP?

- *The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP)* establishes the citizens' right to request access to information in the custody or control of a local authority, and request a review from the Commissioner if they are dissatisfied with the response from the local authority.
- LA FOIP also provides local authorities with guidelines for the protection of information in their custody or control.

What is a Local Authority?

- Local Authority is defined in subsection 2(f) of LA FOIP
- It covers a diverse group of public sector organizations such as libraries, universities and colleges, school boards and health regions and their affiliates, etc.
- Most importantly it is you!
 - a municipality (city, town, village, resort village, rural municipality, municipal district or restructured municipality, etc)
 - a committee of a council of a municipality
 - any board, commission or other body that is appointed pursuant to *The Cities Act*, *The Municipalities Act* or *The Northern Municipalities Act, 2010*

Who is the “head”?

- The head has the ultimate authority and responsibility for access and privacy decisions
- Defined in subsection 2(e) of LA FOIP:
 - in the case of a municipality, the mayor, reeve or chairperson of the local advisory committee, as the case may be
 - in the case of any other local authority:
 - the chairperson of the governing body of the local authority; or
 - the individual designated as the head by the governing body of the local authority;

How to designate a Head

- The head can delegate powers to other officers of the local authority (ex. The administrator)
- Can cover all of LA FOIP or only part
- Must be in writing
- May contain any limitations, restrictions, conditions or requirements
- See section 50 of LA FOIP

What records does LA FOIP apply to?

- LA FOIP applies to all records in the “possession or control” of the local authority
 - General information
 - Personal Information
- **Possession** means physical possession plus a measure of control
- **Control** connotes authority. A record is under the control of a public body when the public body has the authority to manage the record including restricting, regulating and administering its use, disclosure or disposition

Access: What is an Access Request?

- An Access to Information Request is a request for information in the possession or control of a local authority from a citizen or company
- An Access Request under LA FOIP requires a \$20.00 access fee
- A request should be made in the prescribed form, but can be informal
- Only requests made in writing can be reviewed by the IPC
- The occupation of the applicant or reasoning for the request is irrelevant to the Act

Access: Processing Requests

- Once you have received the \$20.00 application fee, you have 30 days to complete the request
- Steps:
 - Do records exist?
 - Are there any third parties?
 - Fee estimate
 - Extension
 - Exemptions

Access: Exemptions

- Exemptions provide the local authority with the ability to protect personal information, as well as sensitive information of third parties, solicitor-client privilege, etc.
- There are two types of exemptions:
 - **Mandatory**
 - **Discretionary**

Access: Mandatory Exemptions

- Mandatory exemptions are introduced with the wording “A head shall refuse...”
- Examples:
 - Third party information (section 18)
 - Records from other governments (section 13)

Access: Discretionary Exemptions

- Discretionary exemptions are introduced with the wording “A head may refuse...”
- The head should exercise their discretion when deciding whether to apply the exemption
- Examples:
 - Law enforcement investigations (section 14)
 - Documents of a local authority (section 15)
 - Economic and other interests (section 17)
 - Solicitor-client privilege (section 21)

Guide to Exemptions

- The IPC has created an extensive document that lays out the tests that will help you to determine whether or not an exemption applies to a record
- The Guide also assists you in defending your reasoning for withholding information, should a request for review be received in our office

Access: Section 7 Response

- A section 7 response is the last piece of an access to information request. In it, you must include any exemptions applied and the contact information for the IPC, should the Applicant wish to request a review.

Privacy

- Privacy is about protecting the personal information of others.
 - What is personal information
 - Collection
 - Use
 - Disclosure
 - Accuracy
 - Safeguards
 - What to do in the event of a breach

What is personal information?

- Personal information is defined in section 23(1) of LA FOIP
- It is a non-exhaustive list. A good rule of thumb is to ask:
 - Is it about an identifiable individual?
 - Is it personal in nature?
- Examples include: Address, phone number, race, religion, age, birthday, personal health information, identifying numbers (ie. license number), opinions and views, information about finances, etc.

Collection of Personal Information

- Sections 24 and 25 of LA FOIP
- A local authority should only collect personal information if it is absolutely necessary for the purpose it is being collected
 - **need-to-know vs. nice-to-know**
- Local Authorities should only collect personal information directly from the individual “where reasonably practical”
- Inform individuals why personal information is being collected

Use of Personal Information

- Section 27 of LA FOIP
- Use - Reference to or manipulation of personal information
- Personal information in the “possession or control” of a local authority should only be used:
 - For the purpose for which it was collected
 - Purposes for which it can also be disclosed listed in subsection 28(2) of LA FOIP

Disclosure of personal information

- Sections 28 and 29 of LA FOIP and the Regulations
- Disclosure - exposure of personal information to a separate entity, not a division or branch of the local authority
- A local authority can only disclose personal information if:
 - They have consent of the individual
 - Circumstances described in sections 28 or 29 exist

Accuracy of Information

- Section 26 of LA FOIP
- A local authority must ensure that personal information being used by the local authority for an administrative purpose is as accurate and complete as is reasonably possible

Safeguards

- Currently there is no requirement for safeguards in LA FOIP - how else can personal information be protected
- Bill 31 currently being considered by the legislative assembly, once passed local authorities will be required to establish policies and procedures to maintain administrative, technical and physical safeguards that:
 - protects the integrity, accuracy and confidentiality of the personal information
 - protect against any reasonably anticipated threat or hazard to the security or integrity of the personal information, loss of the personal information or unauthorized access to or use, disclosure or modification of the personal information
 - ensure compliance with this Act by its employees

Types of Safeguards

- ***Administrative safeguards*** are controls that focus on internal organization, policies, procedures and maintenance of security measures that protect personal information.
- ***Technical Safeguards*** are the technology and the policy and procedures for its use that protect personal information and control access to it.
- ***Physical Safeguards*** are physical measures, policies, and procedures to protect personal information and related buildings and equipment, from natural and environmental hazards and unauthorized intrusion.

What to do in the event of a Privacy Breach?

- What is a privacy breach?
 - **Over Collection:** if a local authority asks for or collects more personal information needed for the purpose for which it is being collected
 - **Unauthorized Use:** if personal information is used by the local authority for reasons that are not consistent with the purpose for which they were collected
 - **Unauthorized Disclosure:** if personal information is missing, when an employee accesses personal information without a need-to-know, when a public body shares personal information with another organization, etc.
 - **Accuracy:** if personal information is inaccurate.

What to do in the event of a Privacy Breach?

- **Contain the Breach**
 - It is important to contain the breach immediately. In other words, ensure that personal information is no longer at risk. This may involve:
 - Stopping the unauthorized practice.
 - Recovering the records.
 - Shutting down the system that was breached.
 - Revoking access to personal information.
 - Correcting weaknesses in physical security.

What to do in the event of a Privacy Breach?

- **Notification**

- The following is a list of individuals or organizations that may need to be notified in the event of a privacy breach:
 - Contact your organization's privacy officer immediately
 - Proactively report the breach to the IPC
 - If criminal activity is suspected (e.g. burglary), contact police
 - Contact the affected individuals unless there are compelling reasons why this should not occur

What to do in the event of a Privacy Breach?

- Investigate the Breach
 - When and how did your organization learn of the privacy breach?
 - Has the privacy breach been contained?
 - What efforts has your organization made to contain the breach?
 - What occurred?
 - What type of breach occurred (e.g. collection, use, disclosure, accuracy, etc.)?
 - What personal information was involved in the privacy breach?
 - When did the privacy breach occur? What are the timelines?
 - Where did the privacy breach occur?
 - How did the privacy breach occur?
 - Who was involved? Who witnessed the privacy breach?
 - What employees, if any, were involved with the privacy breach? What privacy training have they received?
 - What factors or circumstances contributed to the privacy breach?
 - **What is the root cause of the breach?**
 - What is the applicable legislation and what specific sections are engaged?
 - What safeguards, policies and procedures were in place at the time of the privacy breach?
 - Were these safeguards, policies and procedures followed?
 - If no safeguards, policies or procedures were in place, why not?
 - Were the individuals involved aware of the safeguards, policies and procedures?

What to do in the event of a Privacy Breach?

- **Prevent Future Breaches**
 - The most important part of responding to a privacy breach is to implement measures to prevent future breaches from occurring.
 - What steps can be taken to prevent a similar privacy breach?
 - Can your organization create or make changes to policies and procedures relevant to this privacy breach?
 - Are additional safeguards needed?
 - Is additional training needed?
 - Should a practice be stopped?

What to do in the event of a Privacy Breach?

- **Privacy Breach Report**

- **The report should include the following:**

- A summary of the incident and immediate steps taken to contain the breach.
 - Background of the incident. A chronology of events.
 - Description of the personal information involved and affected individuals.
 - A description of the investigative process.
 - The root and contributing causes of the incident.
 - A review of applicable legislation, safeguards, policies and procedures.
 - A summary of possible solutions and recommendations for preventing future breaches. This should include specific timelines and responsibility for implementation of each action.

The IPC

- The Information and Privacy Commissioner (IPC) is an independent officer of the Saskatchewan Legislative Assembly
- The IPC has jurisdiction over 3 statutes
 - The Freedom of Information and Protection of Privacy Act (FOIP)
 - The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP)
 - The Health Information Protection Act (HIPA)

The IPC: Reviews

If a Request for Review is received, an Early Resolution Officer (ERO) from our office will be in contact with you to discuss the review.

When you get a call from us—don't panic! We're really nice to deal with, I swear.

The ERO will attempt to come to an early resolution before a formal review is opened. If early resolution is unsuccessful, then the file will be assigned to an Analyst.

IPC: Reviews

- Once a review file is opened, the local authority will be given 2 weeks to make a submission and provide it to an Analyst
- Resources on how to write a submission can be found on our website, as well as the Guide to Exemptions
- Once a submission is received, the Analyst will commence the analysis of the records and submission
- The Analyst will provide the local authority with a draft review report and await any comments you may have
- Following any commentary or changes, the Commissioner finalizes the report
- Once a review is complete, the local authority has 30 days to respond to any recommendations—no response is considered non-compliance

IPC: Reviews

| | | |
|---|--|---|
| I have been notified that the record does not exist / cannot be found. | This means that the local authority says it does not have records that you are looking for. Please note that a local authority does not have to create new records to answer your request. | The IPC would ask the local authority for a very detailed explanation of its search for records. The IPC would measure the search against best practices. |
| I have not received a reply to my application, which I submitted ____ days ago. | A local authority has 30 days to reply to your request once they have received it. Generally, this reply would either give access to records, inform that records do not exist or that access is denied because an exemption has been applied. | The IPC will contact the local authority and work to get you a response within 7 days. |
| My correction to a personal information record was not accepted as correct/verifiable. | LA FOIP also allows individuals to request that their personal information be corrected (eg. an employee file, account information). If a local authority denies a request, the individual may request a review. | The IPC will attempt to gather facts and submissions from the individual and the local authority and then make a determination if the correction should be made or only a notation be placed in the file. |

IPC: Investigations

- The IPC can learn of a privacy breach in different ways:
 - Proactive reporting
 - Citizen complaint
 - Third party notification
 - Employees of a local authority could inform of inappropriate practices within the organization
 - Media reports

IPC: Investigations

The IPC Investigation Process

- ERO will ensure all necessary information is received, notification will be sent out and an Analyst assigned
- Analyst will ensure an investigation report is received in two weeks
- Analyst will review materials received and determine the direction of the investigation
- Analyst will send a draft report to the local authority
- Commissioner finalizes the report
- Local authority and any complainants will receive a copy of the final report—the report is formally issued
- The local authority has 30 days to respond to the report—no response is considered non compliance

IPC: Investigations

Where possible, the IPC will aim to achieve informal resolution for investigation files. This can be done in various ways:

- Dispel any misunderstandings or clarify objectives between the local authority and the complainant
- Facilitate negotiations between the local authority and the complainant
- Clarify the role of the IPC
- Identify possible outcomes of an investigation
- If the IPC is satisfied with a local authority's internal investigation report

Balancing the Public and the Private

Duties in Municipal Legislation for Council Members and Administration

COUNCIL DUTIES

- The duty to have public meetings
 - Council meetings must be public (s. 120(1) MA; s. 94(1) CA; s. 138(1) NMA)
 - No act is effective unless authorized by a bylaw or resolution at a public council meeting (s. 119(1) MA; s. 93(1) CA; s. 137(1) NMA)
 - May only close meetings in certain circumstances (s. 120(2), (3) MA; s. 94(2), (3), (4) CA; s. 138(2), (3) NMA)
 - If permitted by Part III of LA FOIP
 - For long-range or strategic planning
 - Appeals committees can deliberate or make decisions in closed meetings

COUNCIL DUTIES

- Public disclosure statement (s. 142 MA; S. 116 CA; s. 160 NMA)
- Keep confidential matters private until discussed at a public meeting (s. 92(e) MA; s. 65(e) CA; s. 106(e) NMA)
- Code of ethics (s. 93.1 MA; s. 66.1 CA; s. 107.1 NMA) (MR; CR; NMR)
 - **Transparency and accountability**
 - Conduct council business and duties in an open and transparent fashion
 - Allow people to see the process and rationale used to reach decisions
 - **Confidentiality:**
 - Do not disclose confidential information or take advantage of private information

BAD FAITH

- Ties to public accountability, transparency, and openness
- *Duffield v Prince Albert (City)*, 2015 SKCA 46
 - Decisions can be challenged on the basis they were made in “bad faith”
 - Bad faith means wrongdoing and unreasonable, arbitrary conduct without fairness, openness and impartiality
 - If evidence shows decisions made without “candour” – openness – courts may draw negative implication
- *Shell Lake Holdings Ltd. v. Shell Lake (Village)*, 2000 SKQB 272
 - Informal undertaking at council meeting to not discuss decision on “coffee row” not bad faith

ADMINISTRATION DUTIES

- *Tax Enforcement Act*
 - List of lands in arrears (s. 3 TEA)
 - the assessment number
 - the legal description
 - the title number
 - the amount of arrears
 - Advertised (s. 4 TEA)
 - Publish in one issue of a newspaper (either in newspaper in municipality or, if none, in Saskatchewan newspaper selected by council resolution)
 - Post in municipal office for 60 clear calendar days

ADMINISTRATION DUTIES

- Administrator responsible for the safekeeping of the books, documents, and records of their municipality (s. 111 MA; s. 127 NMA)
- Duty to preserve public documents (s. 116 MA; s. 90 CA; s. 132 NMA)
 - Required to have a records retention and disposal schedule
 - Must permanently preserve:
 - Bylaws
 - Minutes
 - Annual financial statements
 - Tax and assessment rolls
 - Minister's orders
 - Cemetery records

PUBLIC RIGHT TO INSPECT

- Public right of inspection (s. 117 MA; s. 91 CA; s. 133 NMA)
 - Any contract approved by council, any bylaw or resolution, and any account paid by the council relating to the municipality
 - Public disclosure statements
 - Council member official oaths or affirmations
 - Financial statements
 - Auditor's reports
 - Consultant reports, employee reports, or of any committee or body established by council
 - EXCEPT: before it is submitted; and any opinion or report of a lawyer
 - Minutes, after they have been approved
- Must furnish copies in a reasonable time
- May charge fee approved by council – fee must not exceed reasonable costs

PUBLIC RIGHT TO INSPECT

- **Other public documents:**
 - Employee code of conduct (s. 111 MA; s. 85.1 CA; s. 127.1 NMA)
 - Assessment roll (s. 213 MA; s. 183 CA; s. 234 NMA)
 - Waterworks information (s. 54 MR; 22.5 CR; 44 NMR)
 - Cities have specific public accounts obligations, such as providing reporting on expenditures and revenues (s. 7 and 8 of CR)

Resources and Where to go for Help

- IPC Website has many resources – www.oipc.sk.ca
 - *IPC Guide to Exemptions*
 - *Best Practices for Responding to Access Requests*
 - *What to Expect During a Review with the IPC*
 - *Privacy Breach Guidelines for Government Institutions and Local Authorities*
 - *What Councillors should Know about LA FOIP*
 - *Best Practices for Mayors, Reeves, Councillors and School Board Members in Handling Records that Contain PI and PHI*

Resources and Where to go for Help

- **Ministry of Justice – Access and Privacy Branch**
 - **In the door, Out the door**
 - **Flow chart**
 - **Online training**

Resources and Where to go for Help

- Call Steve at SUMA
- Call the IPC
 - Confidential advice
 - If review or investigation is underway, we can help guide you through the process

Questions?

**Saskatchewan Information and Privacy Commissioner
503 - 1801 Hamilton Street
Regina SK S4P 4B4**

**Telephone: 306-787-8350
Toll Free Telephone (within Saskatchewan): 1-877-748-2298
Fax: 306-798-1603**

**Email: intake@oipc.sk.ca
Twitter: [@SaskIPC](https://twitter.com/SaskIPC)**