

On the Interaction between *LA FOIP* and *The Municipalities Act*:¹

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LA FOIP and *The Municipalities Act* work together quite nicely.

- In terms of the *LA FOIP*, section 3 and 4 often come into play:

Application

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
- ...

Existing rights preserved

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;
- ...
- (d) does not prevent access to a registry operated by a local authority where access to the registry is normally allowed to the public.

- But also, we like to remind local authorities of section 22 of *LA FOIP* which dictates that the provisions in *LA FOIP* would prevail in the event of a conflict *with any other Act* in Saskatchewan:

Confidentiality provisions in other enactments

22(1) Where a provision of:

- (a) any other Act;
- (b) a regulation made pursuant to any other Act; or
- (c) a resolution or bylaw;

¹ This 7 page guide is NOT an OIPC legal opinion but offered in the spirit of guidance only. We recommend that all municipalities seek independent legal advice to ensure that our guidance meets with each specific situation on a case-by-case basis.

that restricts or prohibits access by any person to a record or information in the possession or under the control of a local authority conflicts with this Act or the regulations made pursuant to it, the provisions of this Act and the regulations made pursuant to it shall prevail.

- *The Municipalities Act* does have sections in the Act and its Regulations that speak to what is required on a *public disclosure statement*: (section 142 of the Act; section 3.2 of the Regs).

Public disclosure statement

142(1) Subject to the regulations, every member of council shall, within 30 days after being elected, file a public disclosure statement with the administrator in the form provided by the council.

(2) A public disclosure statement required pursuant to subsection (1) must contain:

(a) the name of:

(i) every employer, person, corporation, organization, association or other body from which the member of council or someone in the member's family receives remuneration for services performed as an employee, director, manager, operator, contractor or agent;

(ii) each corporation in which the member or someone in the member's family has a controlling interest, or of which the member or someone in the member's family is a director or a senior officer;

(iii) each partnership or firm of which the member of council or someone in the member's family is a member; and

(iv) any corporation, enterprise, firm, partnership, organization, association or body that the member of council or someone in the member's family directs, manages, operates or is otherwise involved in that:

(A) transacts business with the municipality;

(B) the council considers appropriate or necessary to disclose; or

(C) is prescribed;

(b) the municipal address or legal description of any property located in the municipality or an adjoining municipality that is owned by:

(i) the member of council or someone in the member's family; or

...

...

(6) Notwithstanding subsection (3), a member of council is subject to an ongoing duty of disclosure and is, in any of the following circumstances, required to submit to the clerk within the stated period a written amendment to the member's public disclosure statement:

(a) if the member declares a conflict of interest, as soon as is practicable after the declaration;

[Emphasis added by our office]

And, from the *Municipalities Act* Regulations:

Public disclosure statements

3.2(1) For the purposes of clause 142(6)(a) of the Act, a member of council is required to provide a written amendment to the public disclosure statement if the conflict of interest declared by the member of council involves information that:

(a) has not been previously disclosed on his or her public disclosure statement; and

(b) is required to be disclosed pursuant to section 142 of the Act.

(2) Subsection (1) only applies to information or a matter that is required to be disclosed on the municipality's public disclosure statement.

Section 142 is mentioned specifically in section 117 of *The Municipalities Act*:

Inspection of municipal documents

117(1) Any person is entitled at any time during regular business hours to inspect and obtain copies of:

(a) any contract approved by the council, any bylaw or resolution and any account paid by the council relating to the municipality;

(b) the statements maintained by the administrator in accordance with section 142 and the debentures register;

...

(d) the minutes of the council after they have been approved by the council; and

...

[Emphasis added by our office]

Conclusion on the Interaction of the two Acts: In considering the wording of the above sections from *The Municipalities Act* and its Regs and considering that *LA FOIP* recognizes that it does not apply when something is otherwise legally made public, then there is no conflict between the two

laws. I know this is often confusing to administrators as they think all personal information is private, but that is not always the case. Even if we are dealing with “personal information”, there are many provisions that could authorize disclosure in different circumstances such as section 28(2) of *LA FOIP* which provides a non-exhaustive list of instances when “personal information” may be disclosed. And of course, personal information may always be disclosed if the proper consent has been obtained pursuant to section 28(1) of *LA FOIP*.

- Also, in terms of the general openness to the communities they serve, *The Municipalities Act* provides as follows which may be of assistance to local authorities:

Actions in public

119(1) An act or proceeding of a council is not effective unless it is authorized or adopted by a bylaw or a resolution at a duly constituted public meeting of the council.

(2) An act or proceeding of a council committee is not effective unless it is authorized or adopted by a resolution at a duly constituted public meeting of the committee or council.

(3) Everyone has a right to be present at council meetings and council committee meetings that are conducted in public unless the person presiding at the meeting expels a person for improper conduct.

[Emphasis added by our office]

Meetings to be public, exceptions

120(1) Subject to subsections (2) and (3), councils and council committees are required to conduct their meetings in public.

(2) Councils and council committees may close all or part of their meetings to the public if the matter to be discussed:

(a) is within one of the exemptions in Part III of *The Local Authority Freedom of Information and Protection of Privacy Act*; or

(b) concerns long-range or strategic planning.

(3) Any committee or other body that is established by council solely for the purpose of hearing appeals may deliberate and make its decisions in meetings closed to the public.

Public Disclosure on Meeting Minutes

- **Minutes of Meetings:** On the issue of minutes, above, they too are releasable. We have weighed in on minutes in past reports including [Review Report 239-2020](#):

[35] While I note that the RM (and the Organized Hamlet) has the authority to disclose meeting minutes, I suggest that the RM take note of my office's blog, [Council Agendas and Meeting Minutes](#), which provides suggestions on the preparation of meeting documents to be published on a website that protects the privacy of individuals.

In short, municipalities can withhold personal information that is in meeting documents, but we recommend that you consult this blog in order to fully appreciate that council meetings are to be held in public according to section 120(1) of *The Municipalities Act*. But we explain in the blog: "What does this mean for municipalities posting agendas and meeting minutes to its website? Information in documents that falls within the exemption subsection 15(1) of LA FOIP and subsection 28(1) of LA FOIP, then, can be withheld (or redacted) prior to the document being posted online."

Municipal Maps

- **Municipal Maps:** This is always a tricky issue. First, there is always the question of their purpose. Below, you will see that assessment information is made available in another way and only for a short period of time. There is nothing explicit in *The Municipalities Act* or its Regulations that provides for the authority to release a municipal map, so *LA FOIP* provisions become directly applicable to these maps. This information is coveted by hunters that want to reach out to the homeowner to get permission to hunt on their properties. However, some may argue that if the practice of creating such maps began prior to *LA FOIP* coming into force that the practice is grandfathered in (since each municipality would have had its own practices and which could have changed over time, would be very difficult to demonstrate). In terms of a report where we explored this a bit, you might find the following of interest [from Investigation Report LA-2012-001](#) and please note that we have reproduced section 4 of *LA FOIP* above:

[26] On several occasions Saskatchewan courts have had occasion to consider section 4 of *FOIP* – a section virtually identical to section 4 of *LA FOIP*. Subsections 4(c) and (d) of *LA FOIP* clearly have no application in this particular case.

[27] I note that when section 4 of *FOIP* has been considered in past court decisions, it was determined that it was important whether the publication antedated the proclamation of the privacy law. The approach the Court of Appeal has taken in the past is to view this provision as a kind of a grandfathering provision. The Court of Appeal affirmed in *General Motors Acceptance Corporation of Canada, Limited v. Saskatchewan Government Insurance* that:

The Act does not limit or reduce the rights of access existing at the time of proclamation.

[28] The Court of Appeal was considering section 4 of *FOIP* as did the earlier decision of the Court of Queen's Bench in *City Collection Co. v. Saskatchewan Government Insurance*. Justice Barclay indicated that he was following the judgment of Justice Malone in the case of *General Motors Acceptance Corporation of Canada, Limited v. Saskatchewan Government Insurance* where he stated:

In my opinion s. 4 of the Act is determinative of the issue. The clear intent of this section is to provide that information available to the public prior to the passage of the Act shall remain available after its coming into effect. To interpret this section any other way would result in a restriction on the right of the public to obtain information which it previously had access to. This surely was not the intention of the Legislature. The provisions of the Act following s. 4 must be interpreted as applying *to only* information which is requested by the public which was not available to it prior to the passage of the Act. It is these provisions that attempt to balance the right of privacy of individuals with the desire of the public to obtain more information concerning the operation of Government, its Crown corporations and agencies. This it does by setting out the procedures to be followed and the guidelines to be applied. In my opinion, however, s. 4 makes it clear the procedures and guidelines are not to be applied retrospectively so as to restrict access to information the public was previously entitled to.

[Decisions cited: *General Motors Acceptance Corporation of Canada, Limited v. Saskatchewan Government Insurance* [1993] S.J. No. 601, at p. 3. 17 *City Collection Co. v. Saskatchewan Government Insurance* [1993] S.J. No. 535. 18 *General Motors Acceptance Corporation of Canada, Limited v. Saskatchewan Government Insurance* [1993] S.J. No. 206, at p. 3]

Assessment Rolls

- **Assessment Roll Personal Information:** In terms of assessment values, *The Municipalities Act* does have rules as set out in DIVISION 2 dealing with what must be publicly available within the assessment roll:

Contents of assessment roll

205 The assessment roll is required to show the following for each assessed property:

- a) a description sufficient to identify the location of the property;

- b) the contact information of the assessed person or, if that information is not known and cannot be ascertained after reasonable inquiry, a note stating that the contact information is not known;
- c) whether the property is a parcel of land, an improvement or a parcel of land and the improvements to it;
- d) the assessment class or classes;
- e) the assessed value of the property;
- f) the assessed value of the property after applying the applicable percentage of value set by regulation made pursuant to subsection 196(1);
- g) in the case of a municipality in which a separate school division is or may be established, whether the property is assessable for public school purposes or separate school purposes;
 - i. if the property is exempt from taxation, a notation of that fact;
 - ii. any other information considered appropriate by the municipality

Assessment roll open to public

213(1) The assessor shall make the assessment roll available for public inspection during normal business hours from the day of completion of the assessment roll to the last day for lodging an appeal.

(2) The council may authorize that the assessment roll or portions of the assessment roll be available for public inspection at any additional times that the council may determine.

[Emphasis added by our office]

- **Conclusion on Assessment Roll:** The above provisions strictly limit how long the information is accessible to the public and specifically requires individuals come down to the office to see it only. It fulfills a specific function and protects the individuals' personal information outside of this.