



LA FOIP: Frequently Asked Questions from Administrators



Disclaimer

- Materials prepared are by the Office of the Saskatchewan Information and Privacy Commissioner (IPC) to assist persons in understanding the laws discussed and access and privacy best practices.
- Only offered as non-binding, general advice as we cannot give advanced rulings.



Introduction

- Fall 2019 – *The Local Authority Freedom of Information and Privacy Act* (LA FOIP) presentations from the IPC and Saskatchewan Urban Municipalities Association (SUMA) to the Urban Municipalities Administrators Associations (UMAAS) and Rural Municipalities Administrators Association (RMAA).
- Slides from the presentations can be viewed on www.oipc.sk.ca under Resources – Access – For Public Bodies – [LA FOIP 101: What Municipalities Need to Know](#)
- After these presentations the IPC received numerous calls from administrators who had attended these presentations.
- These are some of the most common questions asked.



How do I go about charging fees?

- Fees can come into effect when a formal request is made pursuant to LA FOIP.
- Fees are discussed in section 9 of LA FOIP.
- Fees are prescribed in section 5 of *The Local Authority Freedom of Information and Protection of Privacy Regulations (LA FOIP Regs)*.

How do I go about charging fees?

- *A local authority may charge:*
 - *\$20 application fee;*
 - *\$.25 per page fee;*
 - *Actual cost of portable electronic storage device;*
 - *Actual cost of copying the record if not electronic or paper;*
 - *If time in excess of one hour spent searching for or preparing records, \$15 per half hour. ***Only for searching for or preparing the record, cannot charge a fee for time spent determining whether to apply an exemption.***
- *Fees are payable at the time access is given.*
- Please refer to our resources, [Steps to Charging Fees](#) and our [Fee Estimate Quick Calculation Guide](#) for further assistance.



What about issuing fee estimates or clarifying an access to information request?

- The day the request is received by the local authority the 30 day clock starts ticking, unless the record cannot be identified based on the description provided.
- If the record cannot be identified the request is deemed to have been made on the date that sufficient clarification is received in order to identify the record.
- If clarification is necessary, the applicant should be contacted immediately to seek clarification.
- If clarification is not necessary but would be helpful as the request is for a large record or a variety of records, a fee estimate may be considered and then the applicant can choose whether to clarify further.
- Section 6 of LA FOIP Regs – if fees are estimated to exceed \$100 a fee estimate must be given.



What about issuing fee estimates or clarifying an access to information request?

- No work should be done until the fee estimate is issued and 50% of the fee is paid as a deposit, if required.
- A fee may not be charged for work completed prior to issuing the fee estimate.
- Subsection 7(2)(e) of LA FOIP - a fee estimate must be issued within 30 days after the access request is received.
- The 30 day clock is suspended after the fee estimate is issued and starts again once the 50% deposit is paid, if required, and the applicant notifies the head that they wish to proceed with the application.
- The remainder of the fee is to be paid when access to the record is given.
- Section 7 of LA FOIP Regs - no fees are payable if access to a record is refused.

Which fees should I use? *The Municipalities Act* vs. Fees in LA FOIP



- If a formal request is NOT made pursuant to LA FOIP, *The Municipalities Act* allows a local authority to establish a bylaw prescribing fees for obtaining copies of records.
- We have heard of such bylaws mirroring the fees found in LA FOIP, this is a reasonable approach and ensures consistency regardless of which method is used to access information.
- The “Fees May Apply” Series by the StarPhoenix/Leader Post found the R.M. of Wallace produced a \$2,200 fee estimate when an access request asked for the most recent operating budget, an employee code of conduct, a council procedures bylaw, council member code of ethics, and public disclosure statements.

Which fees should I use? *The Municipalities Act* vs. Fees in LA FOIP

- The IPC considers a \$2,200 fee for that type of information to be absolutely ridiculous.
- R.M.'s need to ensure that their fees are reasonable.
- Remember that as per subsection 3(1) of LA FOIP, LA FOIP does not apply to:
 - 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;*
- The head or LA FOIP coordinator must be able to demonstrate where the information is available if the assertion is that LA FOIP does not apply to a given record.

Is the application fee per record or per application?

The \$20 application fee is per access request. If the individual request is for a large volume and/or variety of records, a fee estimate can be prepared to offset costs if appropriate in the circumstances.





Can I Disclose a Municipal Employee's Salary?

- A local authority employee's salary is not personal information pursuant to subsection 23(2)(a) of LA FOIP.
- Sometimes it may be accompanied by information that does qualify as personal information, such as specific days or reasons leave time is taken.
- If personal information accompanies an employee's salary the personal information should still be severed or withheld unless the employee has consented to their personal information being disclosed.



Do I have to answer questions asked in an access to information request?

- Sometimes an access to information request will be accompanied by a number of questions that do not directly relate to records.
- As per section 5.1 of LA FOIP, a local authority has a duty to assist which requires it to respond to an access to information request openly, accurately and completely.
- Meeting the duty to assist could include answering questions which may be helpful to explain what records you have so the applicant can determine what they want and better define the scope of the request.
- If a question is asked and a record exists which would answer it, it may not be a bad idea to consider that record as part of your section 7 response.



Do I have to answer questions asked in an access to information request?

For example, an access to information request may say something like:

I am requesting access to records a, b and c. I would also like to know why the municipality chose option 1 over option 2. Additionally, I would like to know when the municipality plans to introduce a noise bylaw.

In responding to this request, you would certainly want to search for and speak to records a, b and c. However for the questions regarding Option 1 vs. Option 2 and the noise bylaw, these are not the types of questions that you are required to answer as part of the response to the access to information request, unless a record or records exist which would provide the answer to one or both of the questions.



Do I have to answer questions asked in an access to information request?

Alternatively, an access to information request may be submitted which says:

I would like records related to the proposed land development, but I would like to know kind(s) of records the municipality has with regard to the land development.

You would want to answer this type of question to fulfill your duty to assist. Answering this type of question will help the applicant determine the specific information they are looking for, and it adds an additional level of transparency to the response to the request.

- There is no duty to create records in order to respond to an access request, but it is also not prohibited if doing so is reasonable.

Am I allowed to release tax certificates?

LA FOIP does not apply to published material/material available for purchase as per subsection 3(1)(a). Tax certificates are available for purchase under section 276 of *The Municipalities Act*. (Review Report LA-2007-002, Paragraph [18])



What language is needed for the head to delegate their authority to another person?

- The head for a municipality will either be the mayor or the reeve.
- If the head is not directly signing off on responses for access to information requests or privacy concerns, their authority should be delegated to the staff member who is. In most cases this will be the administrator.
- In general terms a delegation of authority must be in writing, should be limited and specific as to what duties under LA FOIP the head is (or isn't) delegating, to whom authority it is being delegated to, and the time period for the delegation.
- Delegation of authority is discussed in Section 50 of LA FOIP.

What language is needed for the Head to delegate their authority to another person?

The delegation might be as simple as:

Delegation of Authority

I, _____ Mayor/Reeve of _____ delegate all my authority as Head under *The Local Authority Freedom of Information and Protection of Privacy Act* to _____, Administrator for the year 2020.

Dated _____ of 2020

Mayor/Reeve of _____



Can I have a word document of your sample operational policy?

- This was one of the most asked questions after the presentations.
- The word document is now available on our website at www.oipc.sk.ca under Resources – Access – For Elected Officials – [Sample Operational Policy for Municipalities \(Word Document\)](#)





Do third parties have the right to know who is requesting the information?

- LA FOIP defines third party as follows “**third party** means a person, including an unincorporated entity, other than an applicant or a local authority.”
- In this instance, the third party will be a person or other entity whose information is in the custody or under the control of the local authority, and has been identified as responsive to an access to information request.
- All information under the act should be treated the same regardless of who is requesting it. The identity of the requestor should have no impact on how a request for information is processed. The third party does not have the right to the applicant's identity, as this is the applicant's personal information.



A business area of the municipality wants personal information from me; can I share it?

- Information should be used and/or disclosed for the purposes for which it was collected or consistent with why it was collected, or is otherwise allowed for by subsection 28(2) of LA FOIP. Please keep in mind the data minimization, and need-to-know principles. Those principles are defined as follows:
- **Data minimization principle** means that an organization should collect, use or disclose the least amount of identifying information necessary for the purpose.
- **Need-to-know principle** means personal information or personal health information should only be available to those employees in an organization that have a legitimate need-to-know that information for the purpose of delivering their mandated services.

A business area of the municipality wants personal information from me; can I share it?

- If you determine that the business area has a valid need-to-know, you would want to ensure you have established policies, procedures, systems, and safeguards to ensure it is being used appropriately by the right individuals for the intended purpose and sufficiently protected.



Questions?



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