



## REVIEW REPORT 245-2022

### Saskatoon Police Service

July 6, 2023

**Summary:** The Applicant made an access to information request to the Saskatoon Police Service (SPS). SPS denied access to the records pursuant to subsections 13(1)(a), (b), (d), 14(1)(c), (j), (k), 21(a) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant asked the Commissioner to undertake a review of SPS' decision. As the Commissioner found SPS properly applied subsections 14(1)(c), (k), 21(a) and 28(1) of LA FOIP, he had no need to review the other exemptions SPS applied. The Commissioner recommended that SPS continue to withhold the records pursuant to these subsections, except for portions where he found there was an absurd result; the Commissioner recommended that SPS release these portions to the Applicant within 30 days of the issuance of this Report. The Commissioner's findings and recommendations are outlined in the Appendix of this Report.

### I BACKGROUND

[1] In this review, the Applicant provided authorization for their legal counsel to represent them. References to the Applicant in this Report, however, mean references to the Applicant (and not to their legal counsel).

[2] On September 1, 2022, the Applicant sent an access to information request to the Saskatoon Police Service (SPS) as follows:

The applicant requests access in the form proscribed in s. 10 of the Act to:

a) The entire SPS file(s) regarding any and all allegations of domestic violence made against myself, [name redacted], including but not limited to all correspondence with third parties including the [organization name redacted];

b) The entire SPS file(s) regarding any and all investigation into the disappearance [sic] of my [name and relationship redacted], and [name and relationship redacted], from July 2022 to present, including but not limited to all correspondence with third parties including the [organization name redacted].

[3] In correspondence dated November 9, 2022, SPS issued its decision to the Applicant pursuant to section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). SPS responded that it was partially denying access to the records, in part or in full, pursuant to subsections 13(1)(a), (b), (d), 14(1)(c), (k), 21(a) and 28(1) of LA FOIP.

[4] On December 8, 2022, the Applicant asked my office to undertake a review of SPS' decision.

[5] On December 15, 2022, my office sent a notification of this review to the Applicant and to SPS. My office invited both to provide submissions.

[6] SPS provided its submission on February 28, 2023; the Applicant did not provide a submission.

## **II RECORDS AT ISSUE**

[7] This review involves a large volume of different types of records that are described in the Appendix to this Report. The Appendix outlines the exemptions SPS is relying on to deny access to the records (either in part or in full), and my findings and recommendations. The records are divided into two categories corresponding to each part of the Applicant's access request that SPS describes as either "P1" or "P2" records; I will also refer to them this way.

## **III DISCUSSION OF THE ISSUES**

**1. Do I have jurisdiction?**

[8] SPS is a “local authority” as defined by subsection 2(1)(f)(viii.1) of LA FOIP. Therefore, I find that I have jurisdiction to review this matter.

**2. Did SPS properly apply subsections 14(1)(c) and (k) of LA FOIP to the records?**

[9] Subsection 14(1)(c) of LA FOIP provides as follows:

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

...

(c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

[10] Subsection 14(1)(c) of LA FOIP is a discretionary class-based and harm-based exemption. Meaning it contains both a class and harm-based component. It permits refusal of access in situations where the release of a record could interfere with a lawful investigation or disclose information with respect to a lawful investigation (*Guide to LA FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 29, 2021 [*Guide to LA FOIP*, Ch. 4], p. 52).

[11] The *Guide to LA FOIP* (pp. 52-53) outlines that the following two-part test can be applied:

1. Does the local authority’s activity qualify as a “lawful investigation”?
2. Does one of the following exist?
  - a) Could release of the information interfere with a lawful investigation?
  - b) Could release disclose information with respect to a lawful investigation?

[12] SPS is relying on subsection 14(1)(c) of LA FOIP to deny access to most of the P1 and P2 records (see Appendix).

***1. Does the local authority’s activity qualify as a “lawful investigation”?***

- [13] A lawful investigation is an investigation that is authorized or required and permitted by law. The local authority should identify the legislation under which the investigation is occurring. The investigation can be concluded, active and ongoing or be occurring in the future (*Guide to LA FOIP*, Ch. 4, p. 52).
- [14] SPS submitted that its “powers of investigation are broad and stem from various pieces of legislation”. SPS cited one such piece of legislation being *The Police Act, 1990*, which is a provincial statute. SPS added the P1 records were created in 2020 and 2021 and P2 records were created in 2022 in relation to investigations that could have resulted in charges under the *Criminal Code*.
- [15] I note the P1 and P2 records consist of records such as investigation notes, witness statements and other types of evidence the police would normally gather as part of an investigation. In other reports concerning SPS, including [Review Report 040-2023](#), I agreed that part one of the test applies if the matter at hand could have resulted in *Criminal Code* charges whether the case is ongoing or concluded. The records in this matter indicate that a lawful investigation occurred that could have resulted in *Criminal Code* charges. I continue the same approach in this review; therefore, the first part of the test is met for the portions of the P1 and P2 records where SPS applied subsection 14(1)(c) of LA FOIP. I will consider the second part of the test on these portions.

***2. Does one of the following exist?***

***a) Could release of the information interfere with a lawful investigation?***

***b) Could release disclose information with respect to a lawful investigation?***

- [16] Section 14 of LA FOIP uses the word “could” versus “could reasonably be expected to” as seen in other provisions of LA FOIP. The threshold for could is somewhat lower than a reasonable expectation. The requirement for could is simply that the release of the information could have the specified result. There would still have to be a basis for asserting the harm could occur. If it is fanciful or exceedingly remote, the exemption should not be invoked (*Guide to LA FOIP*, Ch. 4, p. 52).

[17] In this matter, it appears SPS is stating that release of the records could disclose information with respect to a lawful investigation (or part “b”). SPS submitted that the information is sensitive in nature and was provided by various witnesses that include the Applicant. Upon review of the P1 and P2 records, release would clearly disclose information with respect to SPS’ lawful investigation, which meets the second part of the test. As such, I find SPS properly applied subsection 14(1)(c) of LA FOIP where it did in P1 and P2.

[18] Before I consider a recommendation on release, I need to consider if any portions should be released to the Applicant based on the “absurd result” principle. In my office’s [Review Report 040-2023](#), I stated that this principle applies to information that should be disclosed to the person requesting access to it because: 1) the record contains information that is within the person’s knowledge because they provided it; 2) the person was present when the information was provided; or 3) the information is clearly within the person’s knowledge.

[19] I am cognizant, though, that SPS is also relying on subsection 14(1)(k) of LA FOIP to deny access to some of the same portions of the P1 and P2 records where it applied subsection 14(1)(c) of LA FOIP (see Appendix). These portions may be exempt from disclosure pursuant to subsection 14(1)(k) of LA FOIP, or the absurd result principle may also apply to some of these portions. As such, I will review if SPS properly applied subsection 14(1)(k) of LA FOIP to these portions and then make my recommendations based on any absurd results.

[20] Subsection 14(1)(k) of LA FOIP provides as follows:

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

...

(k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

[21] Subsection 14(1)(k) of LA FOIP is a discretionary exemption that contains both a class and harm-based component. It permits refusal of access in situations where release of a record

could interfere with a law enforcement matter or disclose information respecting a law enforcement matter (*Guide to LA FOIP*, Ch. 4, p. 74).

[22] The *Guide to LA FOIP* (pp. 74-76) outlines the following two-part test that can be applied:

1. Is there a law enforcement matter involved?
2. Does one of the following exist?
  - a) Could release of information interfere with a law enforcement matter?
  - b) Could release disclose information with respect to a law enforcement matter?

[23] As stated, SPS applied subsection 14(1)(k) of LA FOIP to some of the same portions of P1 and P2 records where it applied subsection 14(1)(c) of LA FOIP (see Appendix).

***1. Is there a law enforcement matter involved?***

[24] “Law enforcement” includes policing and criminal intelligence. Policing refers to the activities of police services. This means activities carried out under the authority of a statute regarding the maintenance of public order, detection and prevention of crime or the enforcement of law. Criminal intelligence is information relating to a person or group of persons compiled by law enforcement to anticipate, prevent or monitor possible criminal activity. Intelligence-gathering is sometimes a separate activity from the conduct of specific investigations. Intelligence may be used for future investigations, for activities aimed at preventing the commission of an offence, or to ensure the security of individuals or organizations (*Guide to LA FOIP*, Ch. 4, p. 75).

[25] “Law enforcement” also includes investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment. Investigation has been defined, in general, as a systematic process of examination, inquiry and observations. Inspection has been defined, in general, as a careful examination. Legal proceeding has been defined, in general, as any proceeding authorized by law and instituted in a court or tribunal to acquire a right or to enforce a remedy (*Guide to LA FOIP*, Ch. 4, p. 75).

[26] SPS submitted that the matters discussed in the P1 and P2 records had to do with complaints that could have resulted in investigations into possible contraventions of the *Criminal Code*. Earlier, I stated the records contain documents such as investigation notes, witness statements and other types of evidence. It is evident a police investigation was occurring and that members of the SPS carried out duties they normally would under similar types of matters, such as interviewing witnesses, taking photos, etc. There is also evidence that legal proceedings and/or sanctions could have resulted. As such, the first part of the test is met for these portions, and so I will consider the second part of the test.

***2. Does one of the following exist?***

***a) Could release of information interfere with a law enforcement matter?***

***b) Could release disclose information with respect to a law enforcement matter?***

[27] SPS submitted that release of the information could disclose information with respect to a law enforcement matter (or part “b”).

[28] As with subsection 14(1)(c) of LA FOIP, the threshold for subsection 14(1)(k) of LA FOIP is that disclosure “could” have the specified result; it does not need to be a certainty.

[29] “With respect to” are words of the widest possible scope; the phrase is probably the widest of any expression intended to convey some connection between two related subject matters (*Guide to LA FOIP*, Ch. 4, p. 77).

[30] Upon review of the records, it is apparent that the portions of the P1 and P2 where SPS is relying on subsection 14(1)(k) of LA FOIP contain information that could disclose information with respect to a law enforcement matter. As such, it meets the second part of the test, and I find that SPS properly applied subsection 14(1)(k) of LA FOIP where it applied it in the P1 and P2 records (see Appendix).

[31] In my office's [Review Report 038-2022](#), concerning the City of Lloydminster, I considered at paragraph [23] that the absurd result principle can also apply to records where subsection 14(1)(k) of LA FOIP applies. That is, if an applicant supplied the information, was present when it was provided, or would otherwise have knowledge of the information, then the information should be released to them.

[32] While I find SPS properly applied subsection 14(1)(c) and 14(1)(k) of LA FOIP as outlined in the P1 and P2 records, I find the absurd result principle applies to the following P1 and P2 records (described below) because the Applicant provided the information (e.g., videotaped interviews or polygraph test results) or was present or aware of the information provided or gathered (e.g., text messages, consenting to search plus photos related to search). I recommend SPS release the following portions to the Applicant within 30 days of the issuance of this Report (see Appendix):

***P1***

- P1-R1: pages 28 to 31 (in full)
- P1-R3: pages 17 to 65 (in full)
- P1-R6: pages 1 to 10; 12 to 30 (in full)
- P1-R7: video (2:32:15 in length) (in full)
- P1-R8: video (1:11:16 in length) (in full)

***P2***

- P2-R5: pages 1 to 27 (in full)
- P2-R39.1 and R39.2 (in full)
- P2-R48 (in full)

[33] I recommend that SPS continue to withhold the remaining information in the P1 and P2 records pursuant to subsection 14(1)(c) or (k) of LA FOIP (as applicable) as outlined in the Appendix.



[34] Because I have found SPS can continue to withhold records as outlined in the Appendix pursuant to these subsections, I do not need to consider its reliance on subsections 13(1)(a), (b), (d), and 14(1)(j) of LA FOIP to these portions. This leaves me only with subsections 21(a) and 28(1) of LA FOIP to consider. I also note that on page 11 of P1-R6 there is a photograph of an individual on which SPS claimed subsection 28(1) of LA FOIP; I will review this photograph when I undertake my analysis of subsection 28(1) of LA FOIP later in this Report.

**3. Did SPS make a *prima facie* case that subsection 21(a) of LA FOIP applies?**

[35] SPS is making a *prima facie* case that subsection 21(a) of LA FOIP applies, and thus provided my office with an affidavit and schedule of records instead of a copy of the records.

[36] Subsection 21(a) of LA FOIP provides as follows:

**21** A head may refuse to give access to a record that:

(a) contains any information that is subject to any privilege that is available at law, including solicitor-client privilege;

[37] Subsection 21(a) of LA FOIP is a discretionary, class-based exemption. It permits refusal of access in situations where a record contains information that is subject to any legal privilege, including solicitor-client privilege (*Guide to LA FOIP*, Ch. 4, p. 219).

[38] “Including” means that the list of information that follows is incomplete (non-exhaustive). The example in the provision is the type of information that could be presumed to qualify as a “privilege available at law”. Amendments were made to this subsection effective January 1, 2018. The change was the inclusion of the phrase “any privilege that is available at law”. The exemption previously only considered solicitor-client privilege (*Guide to LA FOIP*, Ch. 4, p. 219).

[39] “Privilege” is a special right, exemption or immunity granted to a person or class of persons. There are several types of privilege. In this matter, SPS is making a *prima facie* case that solicitor client, litigation and common-interest privilege apply. In so doing, it has supplied an affidavit and schedule of records. I will review each type of privilege separately.

[40] The purpose of solicitor-client privilege is to assure clients of confidentiality and enable them to speak honestly and candidly with their legal representatives. The privilege has long been recognized as “fundamental to the proper functioning of our legal system” and a cornerstone of access to justice. It has evolved from a rule of evidence to a substantive rule that is more nuanced than simply any communications between lawyer and client (*Guide to LA FOIP*, Ch. 4, p. 221).

[41] In *Solosky v. The Queen*, (1980), Justice Dickson regarded the rule of solicitor-client privilege as a “fundamental civil and legal right” that guaranteed clients a right to privacy in their communications with their lawyers. Further, that solicitor-client privilege must be claimed document by document, and that each document must meet the three-part test. The *Guide to LA FOIP* (pp. 221-225) outlines the three-part test that can be applied as follows:

1. Is the record a communication between solicitor and client?
2. Does the communication entail the seeking or giving of legal advice?
3. Did the parties intend for the communication to be treated confidentially?

[42] SPS is claiming solicitor client privilege on the following:

- P1-R1: pages 17, 60 to 63
- P1-R5: pages 96 to 98, 104 to 111, 114, 115
- P2-R2: pages 138 to 140, 170 to 178, 198 to 203, 218 to 250, 279, 280, 295 to 302, 354 to 360, 365 to 381, 401 to 408, 424, 425, 429 to 434, 465, 468.

***1. Is the record a communication between solicitor and client?***

- [43] In *Descoteaux et al. v. Mierzwinski*, (1982), Justice Lamer outlined a very liberal approach to the scope of the privilege by extending it to include all communications made “within the framework of the solicitor-client relationship.” The protection is very strong, as long as the person claiming the privilege is within the framework (*Guide to LA FOIP*, Ch. 4, p. 221).
- [44] A “communication” is the process of bringing an idea to another’s perception; the message or ideas so expressed or exchanged; the interchange of messages or ideas by speech, writing, gestures or conduct (*Guide to LA FOIP*, Ch. 4, p. 221).
- [45] “Client” means a person who consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services; or, having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on his or her behalf. It also includes a client of the law firm of which the lawyer is a partner or associate, whether the lawyer handles the client’s work (*Guide to LA FOIP*, Ch. 4, p. 221).
- [46] “Lawyer” means a member of the Law Society and includes a law student registered in the Society’s pre-call training program (*Guide to LA FOIP*, Ch. 4, 221).
- [47] The local authority should make it clear who the client is and who the lawyer is.
- [48] SPS identified the P1 records as containing internal emails between SPS members and SPS legal counsel, “concerning matters related to... and potential civil litigation”. SPS added there was correspondence between SPS legal counsel and counsel for the City of Saskatoon because the City of Saskatoon was also involved in possible litigation.
- [49] For the P2 records, SPS noted the various correspondences contain legal opinions from Crown Counsel. SPS added that the P2 records contain documents prepared by “SPS legal counsel for use by SPS members in relation to the investigation...”, and emails “between various SPS employees, SPS legal counsel and Crown counsel” to discuss the legal opinions put forth by SPS’ legal counsel and Crown counsel.

- [50] The types of correspondences involved appear to involve mostly email chains, although P1-R1, pages 60 to 63 are identified as letters, and P2-49, page 5 as a screenshot of text messages. These all fit the definition of “correspondence”.
- [51] In its schedule, SPS noted who the lawyers involved were. Upon review, I note they are members of the Law Society of Saskatchewan. SPS also noted the dates that the correspondences occurred, and it appears they align with the dates of the investigation and subsequent considerations. Based on the events that occurred and what was considered by the police and the Crown, including consideration given for charges, the client appears to be SPS.
- [52] As all the elements for part one of the test are present, I can move onto the second and third parts of the test.

***2. Does the communication entail the seeking or giving of legal advice?***

***3. Did the parties intend for the communication to be treated confidentially?***

- [53] The scope of solicitor-client privilege is broad. It applies to all communications made with a view of obtaining legal advice. If a communication falls somewhere within the continuum of that necessary exchange of information, the object of which is the giving or receiving of legal advice, it is protected by solicitor-client privilege (*Guide to LA FOIP*, Ch. 4, p. 223).
- [54] “Legal advice” means a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications (*Guide to LA FOIP*, Ch. 4, p. 224).
- [55] The second part of the test is satisfied where the person seeking advice has a reasonable concern that a particular decision or course of action may have legal implications and turns to their legal advisor to determine what those legal implications might be. The privilege applies not only to the records that give the legal advice but also to those that seek it and that provide factual information relative to which the advice is sought. Background information can be included as part of the definition of legal advice because it forms part

of the “continuum of communication” between a solicitor and his or her client. Statements of fact are not themselves privileged. It is the communication of those facts between a client and a lawyer that is privileged. The privilege applies to records that quote or discuss the legal advice. For example, information in written communications between officials or employees of a local authority in which the officials or employees quote or discuss the legal advice given by the local authority’s solicitor (*Guide to LA FOIP*, Ch. 4, p. 224).

[56] There must be an expectation on the part of the local authority that the communication will be confidential. “Not every aspect of relations between a lawyer and a client is necessarily confidential”. Conduct which is inconsistent with an expectation of confidentiality can constitute a waiver of privilege. Confidentiality is the *sine qua non* of privilege. Without confidentiality there can be no privilege and when confidentiality ends so too should the privilege. As a rule, the client (usually a local authority) must not have disclosed the legal advice (either verbally or in writing) to parties who are outside of the solicitor-client relationship. Intended confidentiality, though necessary, is not sufficient to attach protection to communications between a lawyer and the local authority – legal advice must be involved. This distinction was emphasized by the Ontario Court of Appeal in *Straka v. Humber River Regional Hospital*, where the Court states, “[it] has long been established that confidentiality alone, no matter how earnestly desired and clearly expressed, does not make a communication privileged from disclosure” (*Guide to LA FOIP*, Ch. 4, pp. 225-226).

[57] SPS stated that the communications in the P1 records related to potential litigation, while the communications in the P2 records involved advice for matters such as making a court application. From a broader review of the information contained in the P1 and P2 records relating to the matters or events, it is evident that legal advice would have been sought and given by SPS legal counsel or Crown counsel, and so I am satisfied the second part of the test is met.

[58] Regarding confidentiality, SPS stated that it has treated the records consistently as confidential.

[59] Because SPS is making a *prima facie* case that subsection 21(a) of LA FOIP applies, I cannot consider if there exist any express statements of confidentiality; certainly, SPS has not pointed out any such statements. By the nature of the records themselves, implicit confidentiality could be intended (*Guide to LA FOIP*, Ch. 4, p. 227).

[60] To determine if confidentiality is implicit, some factors to consider include if a reasonable person would otherwise consider the information confidential, if the local authority has consistently treated the information as confidential, and if the information is available from sources from which the public can access.

[61] Regarding the P1 records, it is not apparent to me that the entire matter or how it concluded was completely publicly known. The public would not have knowledge of certain details or of how SPS was advised on it. In that way, it appears SPS has consistently treated the information as confidential.

[62] Regarding the P2 records, it is apparent that certain matters are continuing or pending, and so it would not be publicly known how SPS or any other parties were advised by legal counsel. It also seems that SPS has consistently treated this information as confidential. I am satisfied that confidentiality was intended.

[63] As the second and third parts of the test are met, I find SPS has made a *prima facie* case for solicitor client privilege and that subsection 21(a) of LA FOIP applies to the following records and I recommend it continue to withhold these portions of the records pursuant to subsection 21(a) of LA FOIP (see Appendix):

- P1-R1: pages 17, 60 to 63
- P1-R5: pages 96 to 98, 104 to 111, 114, 115
- P2-R2: pages 138 to 140, 170 to 178, 198 to 203, 218 to 250, 279, 280, 295 to 302, 354 to 360, 365 to 381, 401 to 408, 424, 425, 429 to 434, 465, 468.

[64] As I found that SPS made a case that solicitor client privilege applies to these records, I do not need to consider if litigation privilege or common-interest privilege apply.

**4. Did SPS properly apply subsection 28(1) of LA FOIP?**

[65] Section 28(1) of LA FOIP provides as follows:

**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.

[66] Section 28 of LA FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains consents to its disclosure or if disclosure without consent is authorized by one of the enumerated subsections of 28(2) or section 29 of LA FOIP. Section 28 of LA FOIP only applies to personal information as defined by section 23 of LA FOIP (*Guide to LA FOIP*, Chapter 6, “Protection of Privacy”, updated February 27, 2023 [*Guide to LA FOIP*, Ch. 6], p. 163).

[67] SPS applied subsection 28(1) of LA FOIP alongside many other exemptions in the P1 and P2 records, including subsections 14(1)(c), (k) and 21(a) of LA FOIP. Since I have found some of the information where SPS is relying on subsection 28(1) of LA FOIP could be withheld under those other exemptions, I need only consider SPS’ application of subsection 28(1) of LA FOIP as follows:

***P1***

- P1-R1: pages 1, 2, 6 to 8, portion of 10, 11, portion of 12, 14 to 16, 19
- P1-R2: page 1, portions of 2 to 6
- P1-R3: pages 1, 2, portion of 6, portion of 8 and 9,
- P1-R4: pages 1, 2, 19, 21, 23,
- P1-R6: page 11.

***P2***

- P2-R1: page 24

[68] SPS submitted these portions contain data elements including names, dates of birth, sex, addresses, telephone numbers, summary of investigation requests and contacts and copies of correspondences. Upon review, I agree that the portions on the pages described in the preceding paragraphs contain names, dates of birth, sex, addresses, telephone numbers and details that would otherwise disclose or reveal the identity of the individual. These are defined as personal information pursuant to subsections 23(1)(a), (e) and (k)(i), (ii) of LA FOIP 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;

...

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

...

(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.

[69] Regarding the photograph on page 11 of P1-R6, SPS did not describe what it is. I note that it appears the photograph was used as part of an interview the Applicant was involved in. In my review of the application of subsections 14(1)(c) and (k) of LA FOIP, I found it was an absurd result to withhold pages 1 to 10 and 12 to 30 of P1-R6 (in full) from the Applicant. As this photograph was also apparently used as part of the interview with the Applicant, it would also be an absurd result to withhold this photograph from the Applicant and recommend SPS release it to the Applicant within 30 days of the issuance of this Report.

[70] Regarding the remaining portions described at paragraph [67], I recommend SPS continue to withhold them pursuant to subsection 28(1) of LA FOIP (see Appendix).



#### **IV FINDINGS**

[71] I find SPS properly applied subsections 14(1)(c), (k), 21(a) and 28(1) of LA FOIP as outlined in the Appendix.

[72] I find there is an absurd result as outlined at paragraphs [32] and [69] of this Report.

#### **V RECOMMENDATION**

[73] Within 30 days of the issuance of this Report, I recommend SPS continue to withhold or release records as outlined in the Appendix.

Dated at Regina, in the Province of Saskatchewan, this 6th day of July, 2023.

Ronald J. Kruzeniski  
Saskatchewan Information and Privacy  
Commissioner

## Appendix

*P1*

<b>Part</b>	<b>Pages or Video Length</b>	<b>Description</b>	<b>LA FOIP Exemptions Applied</b>	<b>Recommendation Withhold or Release</b>
P1-R1	4, 5, 9, 12 to 14, 18, 20 to 35, 39 to 41, 43 to 59, 65, 66	Records related to investigation	14(1)(c), 13(1)(a)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
	1, 2, 6 to 8, portion of 9, 11, portion of 12, 14 to 16, 19	Records related to investigation	28(1)	Withhold pursuant to subsection 28(1) of LA FOIP in full
	42, 64,	Records related to law enforcement matter	14(1)(k)	Withhold pursuant to subsection 14(1)(k) of LA FOIP in full
	28 to 31	Records related to Applicant testimony	14(1)(c)	Release to Applicant (absurd result) in full
	17, 60 to 63	Letters related to solicitor client privilege	21(a) (SPS also applied subsections 14(1)(c) and 28(1))	Withhold pursuant to subsection 21(a) of LA FOIP in full
P1-R2	2, 3	Records related to investigation	14(1)(c) (also 28(1) to portions)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
	1, portions of 2 to 6	Records related to investigation	28(1)	Withhold pursuant to subsection 28(1) of LA FOIP
	4, 5, 7	Records related to law enforcement matter	14(1)(k) (also 28(1) to portions)	Withhold pursuant to subsection 14(1)(k) of LA FOIP in full
P1-R3	3 to 10, 12 to 16	Records related to investigation	14(1)(c) (also 28(1) to portions)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
	1, 2, portion of 6, portions of 8 and 9	Records related to investigation	28(1)	Withhold pursuant to subsection 28(1) of LA FOIP
	17 to 65	Records related to Applicant that they were involve in	14(1)(c)	Release to Applicant (absurd result) in full
P1-R4	3 to 17, 24 to 28, 33	Records related to investigation	14(1)(c) (also 28(1) to portions)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full

	1, 2, 19, 21, 23	Records related to investigation	28(1)	Withhold pursuant to subsection 28(1) of LA FOIP
P1-R5	99 to 103, 112, 113	Records related to investigation	14(1)(c), 28(1) (page 99, 112 and 113 also 13(1)(a))	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
	116 to 121	Records related to law enforcement matter	14(1)(k), 28(1)	Withhold pursuant to subsection 14(1)(k) of LA FOIP in full
	96 to 98	Email chain related to solicitor client privilege	21(a), 28(1)	Withhold pursuant to subsection 21(a) of LA FOIP in full
	104 to 111	Email chain related to solicitor client privilege	14(1)(c), (k), 21(a), 28(1)	Withhold pursuant to subsection 21(a) of LA FOIP in full
	114, 115	Email chain related to solicitor client privilege	21(a) (also 28(1) to 114)	Withhold pursuant to subsection 21(a) of LA FOIP in full
P1-R6	1 to 10; 12 to 30	Test results related to Applicant	14(1)(c), (k)	Release to Applicant (absurd result) in full
	11	Photograph	28(1)	Release to Applicant (absurd result)
P1-R7	Video (2:32:15)	Interview related to testing Applicant	14(1)(c), (k)	Release to Applicant (absurd result) in full
P1-R8	Video (1:11:16)	Applicant interview	14(1)(c), (k)	Release to Applicant (absurd result) in full
P1-9.1 & 9.2	Videos (36:14:00 & 24:38:00)	Other witness interview	13(1)(a), 14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P1-R10	Video (58:34:00)	Other witness interview	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P1-R11	Video (55:16:00)	Other witness interview	14(1)(c)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full

P 2

<b>Part</b>	<b>Pages</b>	<b>Description</b>	<b>LA FOIP Exemptions Applied</b>	<b>Recommendation Withhold or Release</b>
P2-R1	1 to 23 and 25 to 223	Notes, evidence, etc., gathered as part of investigation	14(1)(c) and 28(1) to portions (also 14(1)(j) to pages 51, 214; 13(1) (c) to page 127; 13(1)(d) to pages 135, 136; 13(1)(a) to page 155; 13(1)(d) to pages 189 to 206;	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
	24	Notes, evidence, etc., gathered as part of investigation	28(1)	Withhold pursuant to subsection 28(1) of LA FOIP
P2-R2	1 to 356	Notes, evidence, etc., gathered as part of investigation	14(1)(c) and 28(1) to portions) (also 13(1)(a) to page 346, 374; 13(1)(d) to pages 354, 355; 14(1)(k) to pages 175 and 190 to 192, 346; 13(1)(b) to pages 189, 321, 324 to 338; 14(1)(j) to pages 264, 348;	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R3	1 to 135	Photos related to investigation	14(1)(c) (also 28(1) to photos 37 to 40, 43, 50 to 52, 69, 70, 105)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R4	1-80	Photos related to investigation	14(1)(c) (also 28(1) to pages 37 to 39)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R5	1-27	Photos related to investigation that pertain to Applicant	14(1)(c)	Release to Applicant (absurd result) in full
P2-R6	1-8	Photos related to investigation	14(1)(c) (also 28(1) to photos 7, 8)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R7	Video (5:43:07)	Video related to investigation (Aerial Video)	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R8.1 & R8.2	Videos (4:05 & 5:04)	Videos related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full

P2-R9.1 & R9.2	Videos (3:21 & 7:10)	Videos related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R10	Video (10:04)	Video related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2 – R11.1 to R11.26	Video segments	26 video segments related to investigation	14(1)(c) (also 28(1) to videos 11.5, 11.13, 11.16, 11.22, 11.24, 11.25, 11.26)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R12.1 to R12.4	Video segments	4 video segments related to investigation	14(1)(c) (also 28(1) to videos 12.1 to 12.4)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R13.1 to R13.101	Video segments	101 video segments related to investigation	14(1)(c) (also 28(1) to videos 13.2, 13.4 to 13.6, 13.8 to 13.11, 13.13, 13.14, 13.16, 13.18, 13.20 to 13.22, 13.24, 13.30 to 13.33, 13.39 to 13.41, 13.43 to 13.56, 13.61, 13.65 to 13.67, 13.69 to 13.72, 13.74, 13.77, 13.80 to 13.89, 13.91, 13.93, 13.98 to 13.100)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R14.1 to R14.19	Video segments	19 video segments related to investigation	14(1)(c) (also 28(1) to 14.1 to 14.11, 14.13 to 14.19)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R15 to R17	Videos (00:35, 00:42 & 1:36)	3 separate videos related to investigation	14(1)(c), (k)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R18	1 to 137, 141 to 169, 179 to 197, 204 to 217, 251 to 278, 281 to 294, 303 to 353, 361 to	Investigation notes, emails and other types of documents related to investigation	14(1)(c) and 28(1) to portions (also 13(1)(d) to pages 10 to 24, 29 to 38, 78, 79, 120 to 127, 138 to 140, 151 to 156, 167 to 178, 198 to 203, 218 to 233; 14(1)(k) to pages 78, 79, 89 to 91, 94 to 101, 420 to 423, 448	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full

	364, 382 to 400, 409 to 423, 426 to 428, 435 to 464, 466, 467, 469 to 479		to 450; 13(1)(a) to pages 102 to 111, 157, 158, 179, 453 to 455, 457, 459, 460, 463, 464; 13(1)(b) to pages 138 to 140, 170 to 178, 198 to 203, 218 to 250, 279, 280, 295 to 302, 354 to 360, 365 to 381, 401 to 408, 424, 425, 429 to 434, 465, 468)	
	436	Email	14(1)(k)	Withhold pursuant to subsection 14(1)(k) in full
P2-R18	138 to 140, 170 to 178, 198 to 203, 218 to 250, 279, 280, 295 to 302, 354 to 360, 365 to 381, 401 to 408, 424, 425, 429 to 434, 465, 468	Email chains related to solicitor client privilege	13(1)(b), 14(1)(c), 21(a), 28(1)	Withhold pursuant to subsection 21(a) in full
P2-R19	Audio (8:26)	Audio witness statement related to investigation	13(1)(a), 14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R20	Audio (4:42)	Audio witness statement related to investigation	13(1)(a), 14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R21	Audio (8:51)	Audio witness statement related to investigation	13(1)(a), 14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R22	Audio (16:46)	Audio witness statement related to investigation	13(1)(a), 14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full

P2-R23	Video (33:42)	Video witness statement related to investigation	13(1)(a), 14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R24	Audio (6:33)	Audio witness statement related to investigation	13(1)(a), 14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R25	Audio (4:10)	Audio witness statement related to investigation	13(1)(a), 14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R26	Audio (14:13)	Audio witness statement related to investigation	13(1)(a), 14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R27	Audio (22:50)	Audio witness statement related to investigation	13(1)(a), 14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R28	Video (27:27)	Video witness statement related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R29	Video (30:28)	Video witness statement related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R30	Video (25:35)	Video witness statement related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R31	Video (30:57)	Video witness statement related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R32	Video (39:46)	Video witness statement related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R33	Video (34:21)	Video witness statement related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R34	Video (18:41)	Video witness statement related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R35	Video (53:47)	Video witness statement related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R36	Video (10:01)	Video witness statement related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R37.1 to 37.5	Videos (59:50, 06:22, 38:29,	Video witness statement related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full

	59:50, 00:05)			
P2-R38	Audio (07:14)	Audio call related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R39.1 and 39.2	Video (59:50 and 24:38)	Video interview with Applicant	14(1)(c)	Release to Applicant (absurd result) in full
P2-R40	Video (15:14)	Video interview related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R41	Video (02:13)	Video interview related to investigation	14(1)(c)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R42	Video (11:59)	Video interview with Applicant	14(1)(c)	Release to Applicant (absurd result) in full
P2-R43	Video (2:04:31)	Video interview related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R44.1 to 44.5	Video segments	Video segments related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R45	Video (47:17)	Video interview related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R46	Video (34:53)	Video interview related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R47	Video (53:36)	Video interview related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
P2-R48	Video (1:35:53)	Video interview with Applicant	14(1)(c)	Release to Applicant (absurd result) in full
P2-R49	Pages 1-4, 6-17	Correspondences related to investigation	14(1)(c), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full
	5	Correspondence related to solicitor-client/litigation privilege	14(1)(c), 21(a), 28(1)	Withhold pursuant to subsection 14(1)(c) of LA FOIP in full