



REVIEW REPORT 035-2019

City of Saskatoon

August 14, 2020

Summary:

The Applicant submitted an access request to the City of Saskatoon (City) pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The City provided some records but withheld other records in their entirety pursuant to subsections 28(1), 16(1)(a), 16(1)(b), 21(a) and 21(b) of LA FOIP. The Commissioner found that subsections 28(1), 16(1)(a), 16(1)(b) and 21(a) of LA FOIP applies to some but not all the withheld records. The Commissioner recommended that the City redact portions of the records to which he found exemptions apply and release the remainder. The Commissioner also recommended that the City determine if information to which subsection 28(1) of LA FOIP applies can be released pursuant to subsection 28(2)(n)(i) of LA FOIP or pursuant to subsection 28(2)(s) of LA FOIP and subsection 10(g)(ii) of *The Local Authority Freedom of Information and Protection of Privacy Regulations*.

I BACKGROUND

[1] On November 29, 2018, the City of Saskatoon (City) received the following access to information request:

Emails AND text messages with contents regarding Brenda Wallace AND/OR the Waste as a Utility project TO AND FROM THE FOLLOWING PEOPLE: Jeff Jorgenson (city Mgr.) [sic], Executive assistants/secretaries in City Mgr office, Brenda Wallace, Darren Hill (City Councillor), Patricia Wawrick (city solicitor), Executive Assistants/secretaries in solicitors [sic] office, Human Resources department, Amber Weckworth, Dan Willems, Miachelle [sic] Jelinski.

[2] The Applicant specified that the time period they were seeking records was from November 19th to November 29, 2018 inclusive.

[3] In a letter dated January 18, 2019, the City responded to the Applicant. The City indicated it was granting the Applicant access to records related to “the Waste as a Utility project” but that it was denying the Applicant access to records “regarding Brenda Wallace” pursuant to subsections 28(1), 16(1)(a), 16(1)(b), 21(a) and 21(b) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[4] In an email dated January 23, 2019, the Applicant requested a review by my office.

[5] In emails dated January 24, 2019, my office notified both the City and the Applicant that it would be undertaking a review.

[6] In a letter dated February 20, 2019, the City released five additional emails to the Applicant.

II RECORDS AT ISSUE

[7] The City had withheld 130 pages of emails pursuant to subsections 28(1), 16(1)(a), and/or 16(1)(b) of LA FOIP. However, since the City released five emails to the Applicant on February 20, 2019, there are 123 pages of emails and email attachments that were being withheld pursuant to subsections 28(1), 16(1)(a), and/or 16(1)(b) of LA FOIP. It provided my office with an index of records (Index), which has been reproduced below:

Page Number	Description of Records	Status (released in full, in part, or withheld in full)	Exemptions Applied
1-2	Email	Withheld in full	16(1)(b)
3-5 plus 1 page attachment	Email and attachment	Withheld in full	16(1)(b)
6-8	Email	Withheld in full	16(1)(b)
9-10	Email	Withheld in full	16(1)(a)
11-12	Email	Withheld in full	16(1)(a)
13-17 plus 10 page attachment	Email and attachment	Withheld in full	16(1)(a) and 16(1)(b)
18	Email	Withheld in full	16(1)(a)
19-23 plus 1 page attachment	Email and attachments	Withheld in full	16(1)(a) and 16(1)(b)

24 plus 1 attachment	Email and attachment	Withheld in full	16(1)(a)
25	Email	Withheld in full	16(1)(a) and 16(1)(b)
26	Email	Released on Feb. 20, 2019	
27-28	Email	Released on Feb. 20, 2019	
29-30	Email	Withheld in full	16(1)(b)
31-32	Email	Released on Feb. 20, 2019	
33-34	Email	Released on Feb. 20, 2019	
35-38	Email	Withheld in full	16(1)(a) and 16(1)(b)
39-44	Email and attachments	Withheld in full	16(1)(b) and 28(1)
45-47	Email and attachments	Withheld in full	16(1)(b) and 28(1)
48	Email	Withheld in full	28(1)
49	Email	Withheld in full	28(1)
50-51	Email	Withheld in full	28(1)
52	Email	Withheld in full	28(1) and 16(1)(a)
53	Email	Withheld in full	28(1) and 16(1)(a)
54	Email	Withheld in full	28(1) and 16(1)(a)
55-56	Email	Withheld in full	28(1) and 16(1)(a)
57	Email	Withheld in full	28(1) and 16(1)(a)
58	Email	Withheld in full	28(1) and 16(1)(a)
59-61	Email	Withheld in full	28(1), 16(1)(a), and 16(1)(b)
62	Email	Withheld in full	28(1) and 16(1)(a)
63-65	Email and attachment	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
66-67	Email	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
68-70	Email and attachment	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
71-73	Email and attachments	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
74	Email	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
75	Email	Withheld in full	28(1) and 16(1)(b)
76-79	Email and attachment	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
80-81	Email	Withheld in full	28(1) and 16(1)(a)

82-84	Email and attachment	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
85	Email	Withheld in full	28(1), 16(1)(a)
86	Email	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
87-88	Email	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
89-90	Email	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
91-92	Email	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
93-94	Email	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
95	Email	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
96-98	Email and attachment	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
99-100	Email	Withheld in full	28(1) and 16(1)(a)
101	Email	Withheld in full	28(1) and 16(1)(a)
102-107	Email and attachments	Withheld in full	28(1) and 16(1)(a)
108	Email	Withheld in full	28(1) and 16(1)(a)
109	Email	Withheld in full	16(1)(a) and 16(1)(b)
110	Email	Withheld in full	16(1)(a) and 16(1)(b)
111-113	Email	Withheld in full	16(1)(a) and 16(1)(b)
114-115	Email	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
116-120	Email and attachments	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
121-124	Email	Withheld in full	16(1)(a) and 16(1)(b)
125	Email	Withheld in full	16(1)(a) and 16(1)(b)
126-127	Email	Withheld in full	28(1), 16(1)(a) and 16(1)(b)
128-130	Email	Withheld in full	16(1)(b)

[8] I should also note that there were discrepancies in the page numbers to which the City applied exemptions in the Index and the submission. For example, according to the Index, the City began to apply subsection 16(1)(a) of LA FOIP at page 9. However, in the submission, the City indicated that it applied subsection 16(1)(a) of LA FOIP beginning at

page 1. Where there was a discrepancy in page numbers between the Index and the submission, I followed the page numbers set out in the Index.

[9] The City also withheld records pursuant to subsections 21(a) and 21(b) of LA FOIP. My office has established a process to consider a claim of solicitor-client privilege or litigation privilege which is detailed in the *Rules of Procedure*. My office will request an affidavit of records over which the solicitor-client privilege or litigation privilege is claimed, which is to include a schedule that describes the records. If sufficient information is not provided to conclude that subsection 21(a) of LA FOIP is justified, I will request further particulars which can be provided to my office by affidavit. The City provided my office with an affidavit dated February 21, 2019. It provided another affidavit with a schedule of records on July 31, 2020.

III DISCUSSION OF THE ISSUES

1. Does LA FOIP apply and do I have jurisdiction to review this matter?

[10] The City qualifies as a “local authority” as defined by subsection 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to review this matter and LA FOIP applies.

2. Did the City properly apply subsection 28(1) of LA FOIP to the withheld record?

[11] Where records contain the personal information of a third party, then local authorities may rely on subsection 28(1) of LA FOIP to withhold such information. According to the Index, the City applied subsection 28(1) of LA FOIP to pages 39 to 108, 114 to 120, and 126 to 127. Therefore, I must determine if these pages contain the personal information of a third party. “Personal information” is defined by subsection 23(1) 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:

...

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

...

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

(f) the personal opinions or views of the individual except where they are about another individual;

[12] If the records contain third party personal information, then the City may withhold it pursuant to subsection 28(1) of LA FOIP.

[13] In its submission, the City asserted that the records contain 1) personal contact information and 2) employment history. As part of the review of the records, I also find that some of the records contain opinions of private citizens, which I will also detail below.

Personal contact information

[14] The City asserted that records contain Brenda Wallace's name, address, email address and telephone number. As such, it is withholding this information pursuant to subsection 28(1) of LA FOIP.

[15] Pages 64, 69, 78, 83, 90 and 98 are drafts of a letter to Brenda Wallace. Within the header of the letter is the name and home address of Brenda Wallace. I find that such information qualifies as personal information pursuant to subsection 23(1)(e) of LA FOIP.

[16] Further, pages 114 and 115 contains an email exchange between a City councillor and two private citizens. I find that the names and personal email addresses of the two private citizens qualifies as personal information pursuant to subsection 23(1)(e) of LA FOIP.

[17] Finally, pages 126 and 127 contain an email exchange between a City councillor, the City Manager, and a private citizen. These email exchanges contain the private citizen's name, personal email address, and two personal telephone numbers that belongs to the private citizen. I find that such information qualifies as personal information pursuant to subsection 23(1)(e) of LA FOIP.

Employment History

- [18] In its submission, the City asserted that information on pages 39 to 127 constituted employment history as it is the type of information normally found in a personnel file. It said that these pages contain correspondence and decisions made by the City and Brenda Wallace regarding Brenda Wallace's employment. Further, it said that the headers in the emails on these pages would reveal the identity of those involved in the conclusion of Brenda Wallace's employment. This would enable the Applicant to infer details of the conclusion of employment. The City did not specify precisely what inferences could be made.
- [19] *Employment history* is the type of information normally found in a personnel file such as performance reviews, evaluations, disciplinary actions taken, reasons for leaving a job or leave transactions. It could also include the start date and end date of employment.
- [20] To assist in my analysis, I look to Investigation Report 296-2017 and Investigation Report 173-2018. First, in Investigation Report 296-2017, I had determined that the contents of a termination letter contained "personal information". The termination contained a statement of why a person's contract was terminated, the reasons for the termination, the fact that expectations were discussed with the person and that the expectations were not met. I found that such information is "employment history" and qualified as personal information pursuant to subsection 23(1)(b) of LA FOIP.
- [21] Second, in Investigation Report 173-2018, I had determined that the severance amount qualified as personal information pursuant to subsection 24(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as severance amounts paid to an employee constitute a "financial transaction" involving an individual. Subsection 24(1)(b) of FOIP is similar to subsection 23(1)(b) of LA FOIP.
- [22] Also, I note a few decisions by Ontario's Office of the Information and Privacy Commissioner (ON IPC) provided that records related to the arrangements put in place to end an employment connection does not qualify as "employment history". First, in Order

M-173, the ON IPC determined that certain agreements did not contain “employment history”. It said:

...while the three agreements arose out of pre-existing employment relationships, the personal information contained in the various clauses, with some exceptions, does not pertain to the employment history of the three individuals for the purposes of section 14(3)(d) of the Act. Rather, this information more accurately relates to the arrangements which have been put in place to end the employment connection.

[23] Further, ON IPC’s Order MO-2293 provides that records such as agreement or undertakings that relate to arrangements put in place to end an employment connection on mutually agreed upon terms does not qualify as “employment history”. It says:

In the current appeal, I find that the severance agreement contains several releases, agreements and undertakings that do not contain information about the affected party’s “employment history” and, therefore, do not fall under the presumption at section 14(3)(d). ... These releases, agreements and undertakings all relate to arrangements put in place to end the employment connection on mutually agreed upon terms. Therefore, I find that none of these provisions fall within any of the presumptions found at section 14(3).

[24] Based on a review of pages 39 to 127, I find that personal information as defined by subsection 23(1)(b) by LA FOIP exists on the following pages:

- I find that the body of the email dated November 23, 2018, timestamped 8:34am on pages 53, 55, and 60 qualifies as personal information as defined by subsection 23(1)(b) of LA FOIP as it qualifies as a “leave transaction”.
- I find that the emails on pages 59, 60, and 61 provides details on the conclusion of Brenda Wallace’s employment. As such, this information qualifies as personal information as defined by subsection 23(1)(b) of LA FOIP.
- I find that the third sentence in the email dated November 26, 2018, timestamped 6:43pm on page 95 reveals details on the conclusion of Brenda Wallace’s employment. As such, this sentence qualifies as personal information as defined by subsection 23(1)(b) of LA FOIP.
- I find that the lump sum payment amounts in the drafts of the termination letter that appears on pages 64, 69, 78, 83, 90 and 98 qualifies as personal information pursuant to subsection 23(1)(b) of LA FOIP as each lump sum payment amounts constitute a “financial transaction” involving Brenda Wallace.

- The drafts of the termination letter that appears on pages 43, 64, 69, 70, 78, 83, 90 and 98 contain the end date of Brenda Wallace’s employment. I find that this date qualifies as personal information as defined by subsection 23(1)(b) of LA FOIP.
- The end date of Brenda Wallace’s employment appears in drafts of the unsigned “Full and Final Release” agreement. I find that this date qualifies as personal information as defined by subsection 23(1)(b) of LA FOIP. The date appears on the drafts of this agreement on pages 68a, 77a, and 82a. However, I do not find that the remainder of the contents of this agreement qualifies as personal information as defined by subsection 23(1)(b) of LA FOIP. The terms of the agreement do not include anything that is personal in nature.
- A screenshot of the search terms entered into the Google search bar at the top of pages 105 and 106 qualifies as personal information as defined by subsection 23(1)(b) of LA FOIP as it describes the nature of Brenda Wallace’s departure from the City.

[25] Other records from pages 39 to 127 may raise the fact the employment relationship between Brenda Wallace and the City was ending, but they do not include anything of a personal nature regarding Brenda Wallace that would qualify as personal information as defined by subsection 23(1)(b) of LA FOIP. For example, the records do not provide a personal reason for leaving or an evaluation of Brenda Wallace’s work performance. The following are examples of how records do **not** contain the employment history of Brenda Wallace:

- Drafts of speaking notes appear on pages 40, 41, 46, and 47. The speaking notes provide that Brenda Wallace’s employment with the City would be concluding and outlines options on how the conclusion can occur. I find such information does not reflect Brenda Wallace’s employment history but rather arrangements that can occur going forward.
- Similarly, the majority of the draft termination letter that appears on pages 42, 43, 44, 64, 65, 69, 70, 78, 79, 83, 84, 90 outlines the options on how the conclusion of the employment can occur. As such, the draft termination letter does not reflect Brenda Wallace’s employment history but rather arrangements that can occur going forward. The exception is the termination date that appears on pages 43, 64, 69, 70, 78, 83, and 90, which qualifies as personal information, as described earlier.
- Emails announcing that the City and Brenda Wallace are ending their employment relationship, on pages 52, 54, 57, 58, 80, 81, 86, 87, 88, 91, 92, 99, 100, 114, and 125. These emails do not divulge any personal information about Brenda Wallace. They do not provide the end date of Brenda Wallace’s employment, they do not provide a personal reason for Brenda Wallace leaving, or an evaluation of Brenda

Wallace's work performance. As such, I do not find that these emails contain personal information as defined by subsection 23(1)(b) of LA FOIP.

- Emails to/from the City's media relations personnel on pages 71, 72, and 73. Media Relations is providing advice on how to manage inquiries from the media. I find that the advice does not contain any information about Brenda Wallace's employment history.
- On pages 102, 103, 104, 105, 106, 107, and 108, Media Relations sends an internal email with 1) screenshots of a news article, 2) search terms entered into Google search bar 3) a screenshot of search results about Brenda Wallace's departure, and 4) a link to a news article. Earlier, I had already found that the search terms entered into a Google search bar at the top of pages 105 and 106 qualifies as "personal information" as defined by subsection 23(1)(b) of LA FOIP. However, the remainder of the information on these pages do not qualify as "personal information" or is information that is already publicly available.

[26] Section 8 of LA FOIP requires local authorities to conduct a line-by-line review of records and redact only the portions of records to which the applicant is refused access, so it can provide access to as much of a record as possible without disclosing the information it is refusing access. Section 8 of LA FOIP provides:

8 Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.

[27] I note that the City indicated that it withheld records as a whole, instead of redacting portions, because releasing portions of the records (emails and attachments) such as the email header would reveal the dates of emails, the names and job titles of City employees involved in the conclusion of the former City employee's employment. Such information would enable the Applicant to draw accurate inferences about Brenda Wallace's employment history. It said:

The City of Saskatoon withheld the records rather than redacting portions, as the information relating to the date, employee's name and job titles of those who sent and received the emails would create a timeline providing accurate inferences to Ms. Wallace's employment history.

...

The headers of the emails would provide the Applicant...enough detail regarding those involved in the conclusion of her employment to infer details of the termination.

[28] The City did not specify what inferences could be drawn from releasing portions of the records, such as email headers. Perhaps the City is concerned that the Applicant can infer precisely the end date of Brenda Wallace's employment. However, I do not find that this is the case. If the City redacts the end date of Brenda Wallace's employment found in the "Full and Final Release" document and in the draft termination letters (as described at paragraph [24]), then I do not see how the Applicant can infer the end date based on email headers. Further, I do not know what inferences can be drawn about Brenda Wallace's employment history by revealing who was involved in the conclusion of Brenda Wallace's employment at the City.

[29] I find that the City has not met its obligation under section 8 of LA FOIP.

Opinions of private citizens

[30] As noted earlier, pages 114 and 115 contains an email exchange between a City councillor and two private citizens (one citizen was the author while the other was carbon copied). I find that the email by one of the private citizens contains the personal opinions and views of the private citizen. Such information qualifies as personal information as defined by subsection 23(1)(f) of LA FOIP.

[31] Also noted earlier, pages 126 and 127 contains email exchanges between a City councillor, the City Manager, and a private citizen. I find that the email by the private citizen contains their personal opinion and views. Such information qualifies as personal information as defined by subsection 23(1)(f) of LA FOIP.

3. Did the City consider releasing some or all of the personal information pursuant to subsection 28(2)(n)(i) of LA FOIP?

[32] In my office's Investigation Report 173-2018, I had determined that the severance amount of a former employee qualified as "personal information" pursuant to subsection 24(1)(b) of FOIP. In that report, I recommended that the government institution consider subsection 29(2)(o)(i) of FOIP.

[33] As I have said earlier, subsection 24(1)(b) of FOIP is similar to subsection 23(1)(b) of LA FOIP. Further, subsection 29(2)(o) of FOIP is similar to subsection 28(2)(n)(i) of LA FOIP. Subsection 28(2)(n)(i) of LA FOIP provides as follows:

28(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

...

(n) for any purpose where, in the opinion of the head:

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure;

[34] In Review Report 082-2017 and Review Report 173-2018, I used a three-part test to determine whether a public body can rely on either subsection 29(2)(o) of FOIP or subsection 28(2)(n)(i) of LA FOIP. The three-part test is as follows:

1. Is the information “personal information”?
2. Is there a public interest in the information?
3. Does the public interest outweigh any invasion of privacy?

[35] For the first part of the test, I have already found that there is personal information as described at paragraph [24], including the lump sum payment amounts.

[36] For the second part of the test, I need to determine if there is a public interest in the information. In Investigation Report 092-2015 to 095-2015, Review Report 145-2014, Review Report 173-2018, and 102-2019, I used the following criteria to determine if there’s a public interest:

1. Will the records contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be, if the public knew about it? The following may be relevant:
 - Have others besides the applicant sought or expressed an interest in the records?

- Are there other indicators that the public has or would have an interest in the records?
2. Is the applicant motivated by commercial or other private interests or purposes, or by a concern on behalf of the public, or a sector of the public? The following may be relevant:
- Do the records relate to a personal conflict between the applicant and the government institution?
 - What is the likelihood the applicant will disseminate the contents of the records in a manner that will benefit the public?
3. If the records are about the process or functioning of the government institution, will they contribute to open, transparent and accountable government? The following may be relevant:
- Do the records contain information that will show how the government institution reached or will reach a decision?
 - Are the records desirable for subjecting the activities of the government institution to scrutiny?
 - Will the records shed light on an activity of the government institution that have been called into question?

[37] Based on its submission, it appears the City has not considered if there's a public interest in releasing Brenda Wallace's personal information, such as the lump sum payment amounts. I recommend that the City consider subsection 28(2)(n)(i) of LA FOIP.

4. Did the City consider subsection 28(2)(s) of LA FOIP and subsection 10(g)(ii) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations)?

[38] Subsection 28(2)(s) of LA FOIP provides:

28(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

...
(s) as prescribed in the regulations.

[39] Subsection 10(g)(ii) of the LA FOIP Regulations provides as follows:

10 For the purposes of subsection 28(2)(s) of the Act, personal information may be disclosed:

...

(g) to any person where the information pertains to:

...

(ii) the terms or circumstances under which a person ceased to be an employee of a local authority, including the terms of any settlement or award resulting from the termination of employment;

[40] *Terms* means any contractual obligation of a local authority or the employee related to a termination of employment. This includes the terms of any settlement or award resulting from the termination of employment (Investigation Report 296-2017 at [19]; Review Report 173-2018 at [28]).

[41] *Settlement* means the action or process of settling; an official agreement intended to resolve a dispute or conflict (Review Report 173-2018 at [29]).

[42] I already found that the lump sum payment amounts on pages 64, 69, 78, 83, and 90 qualifies as personal information. The lump sum payment amounts would also qualify as terms of the settlement between the City and Brenda Wallace. Based on the submission provided by the City, it does not appear the City has considered subsection 28(2)(s) of LA FOIP or subsection 10(g)(ii) of LA FOIP Regulations. Therefore, even though the lump sum payment amounts have been found to be personal information, I recommend that the City consider releasing the amounts pursuant to subsection 28(2)(s) of LA FOIP and subsection 10(g)(ii) of the LA FOIP Regulations.

5. Did the City properly apply subsection 16(1)(b) of LA FOIP?

[43] Subsection 16(1)(b) of LA FOIP provides as follows:

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

...

(b) consultations or deliberations involving officers or employees of the local authority;

[44] In order for subsection 16(1)(b) of LA FOIP to apply, the following two-part test can be met:

1. Does the record contain consultations or deliberations?
2. Do the consultations or deliberations involve officers or employees of the local authority?

[45] My office's *Guide to FOIP, Chapter 4* (updated February 4, 2020) (Guide to FOIP) at page 128, provides that a consultation can occur when the views of one or more officers or employees of a public body are sought as to the appropriateness of a particular proposal or suggested action. It can include consultations about prospective future actions and outcomes in response to a developing situation. It can also include past courses of action taken.

[46] Further, the Guide to FOIP defines "deliberation" at page 128 as the action of deliberation (to deliberate: to weigh in mind; to consider carefully with a view to a decision; to think over); careful consideration with a view to a decision. The Guide to FOIP also says a deliberation can occur when there is a discussion or consideration of the reasons for or against an action. It can refer to discussions conducted with a view towards making a decision.

[47] The City offered the following arguments for how subsection 16(1)(b) of LA FOIP applies.

Pages 39 to 127

[48] In its submission, the City indicated that much of the information contained in pages 39 to 127 qualify for exemption under subsection 16(1)(b) of LA FOIP as they contain deliberations by City employees that relate to the conclusion of Brenda Wallace's employment. Further, some of the records contain the deliberation regarding the messaging about Brenda Wallace's departure from the City.

Pages 29 and 30

[49] Pages 29 and 30 are emails. The City indicated that employees were deliberating and providing their opinions regarding a request for proposal.

Pages 39 to 44

[50] Pages 39 to 44 is an internal email sent from one City employee to another. Attached to the email are two documents – a draft of the termination speaking notes and a draft of a termination letter. In its submission, the City indicated that the email involves employees whose duties and responsibilities include offering their opinions regarding the speaking notes and termination letter.

[51] According to its Index, the City applied subsection 16(1)(b) of LA FOIP to pages 1 to 8, 13 to 17, 19 to 23, 25, 29 to 30, 35 to 38, 39 to 47, 59 to 61, 63 to 79, 82 to 84, 86 to 98, 109 to 130. Before I proceed, I note that I already found that subsection 28(1) of LA FOIP applies to pages 59 to 61. Therefore, I will not consider whether or not subsection 16(1)(b) of LA FOIP applies to pages 59 to 61. I will consider all the other pages to which the City applied subsection 16(1)(b) of LA FOIP.

[52] I find that the following can be exempt pursuant to subsection 16(1)(b) of LA FOIP as they contain consultations or deliberations involving City employees:

- body of email dated November 19, 2018, timestamped 5:09pm on pages 1, 4, 7, 15, 16, 22,
- body of email dated November 19, 2018 timestamped 5:11pm on pages 4, 7, 15, 22,
- body of email dated November 20, 2018 timestamped 10:22am on pages 3, 6, 14, 21,
- body of email dated November 20, 2018 timestamped 11:05am on pages 6, 14, 20,
- body of email dated November 20, 2018 timestamped 11:22am on pages 13, 20,
- body of email dated November 20, 2018 timestamped 11:57am on pages 13, 19,
- body of email dated November 20, 2018 timestamped 2:10pm on page 19,
- body of email dated November 22, 2018 timestamped 1:55 on page 25,

- attachments to the email dated November 21, 2018 timestamped 3:10pm as the attachments contain consultations or deliberations between City employees on pages 40 to 44 and pages 46 to 47,
- body of email dated November 26, 2018 timestamped 10:16am on page 63,
- attachment to the email dated November 26, 2018 timestamped 10:16am on pages 64 to 65,
- body of email dated November 26, 2018 timestamped 10:25am on page 66,
- body of email dated November 26, 2018 timestamped 12:58pm on pages 71 and 72,
- body of email dated November 26, 2018 timestamped 1:38pm on page 74,
- body of email dated November 26, 2018 timestamped 1:47pm on page 75.

[53] I do not find that subsection 16(1)(b) of LA FOIP applies to the header of the emails or the email signatures listed above. My office's Guide to FOIP at page 130 offers guidance on subsection 17(1)(b) of FOIP, which is similar to subsection 16(1)(b) of LA FOIP. The Guide to FOIP provides that subsection 17(1)(b) of FOIP does not generally apply to records or parts of records that in themselves reveal only that:

- A consultation or deliberation took place at a particular time;
- Particular persons were involved; or
- A particular topic was involved.

[54] For the remaining pages to which the City applied subsection 16(1)(b) of LA FOIP, I found that the contents do not qualify as "consultations" or "deliberations". For example, pages 35 to 38 are emails between City employees. The contents of the emails do not appear to be consultations or deliberations. Rather, it appears as though the employees are asking about the status of a situation and employees are providing the status. As such, subsection 16(1)(b) of LA FOIP does not apply to these pages. Another example are pages 68, 68a, 68b, 69 and 70. These pages contain an email from one City employee to another. Attached to the email is the unsigned final version of the "Full and Final Release" document and a copy of the termination letter. Based on the contents of the email and the attachments, there does not appear to be any consultations or deliberations between the employees. As such, subsection 16(1)(b) of LA FOIP does not apply to these pages.

6. Did the City properly apply subsection 16(1)(a) of LA FOIP?

[55] Subsection 16(1)(a) of LA FOIP provides as follows:

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

(a) advice, proposals, recommendations, analyses or policy options developed by or for the local authority;

[56] My office uses the following two-part test to determine if subsection 16(1)(a) of LA FOIP applies to records:

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?
2. Was the advice, recommendations, analyses and/or policy options developed by or for the local authority?

[57] Before I proceed with my analysis, I must provide definitions for the first part of the two-part test. Page 120 of my office's Guide to FOIP provides that "advice" is guidance offered by one person to another. It can include the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. Advice encompasses material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation. It can be an implied recommendation. The "pros and cons" of various options also qualify as advice. It should not be given a restricted meaning. Rather, it should be interpreted to include an opinion that involves exercising judgement and skill in weighing the significance of fact. It includes expert opinion on matters of fact on which a government institution must make a decision for future action.

[58] Further, page 121 of my office's Guide to FOIP provides that a recommendation is a specific piece of advice about what to do, especially when given officially; it is a suggestion that someone should choose a particular thing or person that one thinks is particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly and pointedly than "advice". It can include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person

being advised. It includes suggestions for a course of action as well as the rationale or substance for a suggested course of action. A recommendation, whether express or inferable, is still a recommendation.

[59] Further, my office’s Guide to FOIP at page 121 defines “a proposal” as something offered for consideration or acceptance. “Analyses” (or analysis) is the detailed examination of the elements or structure of something; the process of separating something into its constituent elements. Finally, “policy options” are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made. Policy options include matters such as a public servant’s identification and consideration of alternative decisions that could be made. In other words, they constitute an evaluative analysis as opposed to objective information.

[60] Finally, at pages 122 to 123 of the Guide to FOIP, in order to be “developed by or for” the local authority, the advice, proposals, recommendations, analyses and/or policy options should:

- i) be sought, be expected, or be part of the responsibility of the person who prepared the records; and
- ii) be prepared for the purpose of doing something, for example, taking an action or making a decision; and
- iii) involve or be intended for someone who can take or implement the action.

[61] In its submission, the City indicated that the information on pages 1 to 39 was developed by or for the local authority. It used pages 9 to 12 of the records as a representative sample to demonstrate how subsection 16(1)(a) of LA FOIP applies to pages 1 to 39.

[62] Also, in its submission, the City argued that pages 39 to 127 contains advice sought and opinions provided regarding Brenda Wallace’s departure. It used page 85 as a representative sample of how subsection 16(1)(a) of LA FOIP applies to pages 39 to 127. It provided arguments as to how the information on page 85 was developed by or for the

City. Again, both parts of the two-part test must be met in order for subsection 16(1)(a) of LA FOIP to be found to apply.

[63] According to its Index, the City applied subsection 16(1)(a) of LA FOIP to pages 9 to 25, 35 to 38, 52 to 74, and 76 to 127.

[64] Before I proceed, I need to note that I already found that subsection 16(1)(b) of LA FOIP applies to the bodies of emails that appear on pages 13 to 17, 19 to 23, 25, 63 to 65, 66 to 67, and 71 to 74. Therefore, I do not need to determine if subsection 16(1)(a) of LA FOIP applies to the bodies of emails that appear on these pages. Further, I already found that subsection 28(1) of LA FOIP applies to pages 59 to 61. As such, I do not need to determine if subsection 16(1)(a) of LA FOIP applies to these pages. I will proceed to determine if subsection 16(1)(a) of LA FOIP applies to the pages to which the City applied the exemption.

[65] First, I find that subsection 16(1)(a) of LA FOIP does not apply to the email headers or email signatures that appear on pages 13 to 17, 19 to 23, 25, 63 to 65, 66 to 67, and 71 to 74. This is because neither the email headers nor the email signatures qualify as advice, proposals, recommendations, analyses or policy options.

[66] Second, I find that subsection 16(1)(a) of LA FOIP applies to the bodies of emails that appear on pages 9 to 12. The contents qualifies as analysis and recommendations. Further, they were developed by or for the City.

[67] Third, I find that subsection 16(1)(a) of LA FOIP applies to pages 117 to 120. Pages 117 to 120 is a briefing note. The briefing note contains recommendations on how the City Manager could answer possible questions they might be asked by the media. Further, the recommendations were developed by or for the City.

[68] Finally, I find that subsection 16(1)(a) of LA FOIP applies to the body of the email on page 125. The content of the email constitutes as a “recommendation”. Further, the recommendation was developed by or for the City.

[69] For the remaining pages to which the City applied subsection 16(1)(a) of LA FOIP, I found that the contents do not qualify as advice, proposals, recommendations, analyses and/or policy options. As such, subsection 16(1)(a) of LA FOIP does not apply to these pages. For example, page 52 contains an email sent by the City Manager to City employees. The email announces a decision that was made. The decision does not constitute advice, proposals, recommendations, analyses or policy options. As such, subsection 16(1)(a) of LA FOIP does not apply.

7. Did the City properly apply subsection 21(a) of LA FOIP?

[70] The City has claimed subsection 21(a) of LA FOIP to records to which it describes as follows:

The files of the City Solicitor's Office contain documents that are responsive to this freedom of information request and are subject to solicitor-client privilege. On behalf of the City, solicitor-client privilege is claimed over emails between one or more of the subjects of the freedom of information request and the City Solicitor's Office wherein the City Solicitor's Office was either an author or a recipient of the emails.

[71] My office has established a process to consider a claim of solicitor-client privilege. When considering claiming solicitor-client privilege, local authorities have three options when preparing records for review with my office:

1. Provide the documents to my office with a cover letter stating the local authority is not waiving the privilege;
2. Provide the documents to my office with the portions severed where solicitor-client privilege is claimed; or
3. Provide my office with an affidavit with a schedule of records, according to Part 9 of my office's *Rules of Procedure*.

[72] In this case, the City provided my office with an affidavit with a schedule of records. There appears to be eight emails to which the City is applying subsection 21(a) of LA FOIP. According to its affidavit, it is claiming that solicitor-client privilege applies to the records.

[73] My office's Guide to FOIP provides the following three-part test when determining if solicitor-client privilege applies to a record:

- 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?

[74] I will use the above three-part test to determine if solicitor-client privilege applies.

[75] First, the eight records are emails between the City's former solicitor and City employees or a City councillor. I find that the eight records are a communication between solicitor and client.

[76] Second, according to the City's affidavit, the City asserted that the emails entail the seeking or giving of legal advice. Based on the description of the emails with the schedule, it appears as though the City's solicitor is actively participating in the email exchanges and not merely being copied on the email exchange. I find that the second part of the test is met.

[77] Third, according to the City's affidavit, the City asserted that the parties intend for the communication to be treated confidentially. There is no indication that the communications have been treated in a non-confidential manner. Based on a review of the schedule of records, I find that the third part of the test is met.

[78] I find that subsection 21(a) of LA FOIP applies to the records as described in the City's schedule of records. As such, there is no need for my office to consider subsection 21(b) of LA FOIP.

IV FINDINGS

[79] I find that the headers of the letters on pages 64, 69, 78, 83, 90 and 98 contains personal information pursuant to subsection 23(1) of LA FOIP.

- [80] I find that names and personal email addresses of the two private citizens on pages 114 and 115 qualifies as personal information pursuant to subsection 23(1)(e) of LA FOIP.
- [81] I find that the name, personal email address, and two telephone numbers on pages 126 and 127 qualifies as personal information pursuant to subsection 23(1)(e) of LA FOIP.
- [82] I find that the body of the email dated November 23, 2018 timestamped 8:34am on pages 53, 55, and 60 qualifies as personal information as defined by subsection 23(1)(b) of LA FOIP as it qualifies as a “leave transaction”.
- [83] I find that the emails on pages 59, 60, and 61 provides details on the conclusion of Brenda Wallace’s employment. As such, the information qualifies as personal information as defined by subsection 23(1)(b) of LA FOIP.
- [84] I find that the third sentence in the email dated November 26, 2018, timestamped 6:43pm on page 95 reveals details on the conclusion of Brenda Wallace’s employment. As such, this sentence qualifies as personal information as defined by subsection 23(1)(b) of LA FOIP.
- [85] I find that the lump sum payment amounts in the drafts of the termination letter that appears on pages 64, 69, 78, 83, 90 and 98 qualifies as personal information as defined by subsection 23(1)(b) as each of these lump sum payment amounts constitute a “financial transaction” involving Brenda Wallace.
- [86] The drafts of the termination letter that appear on pages 43, 64, 69, 70, 78, 83, 90 and 98 contain the end date of Brenda Wallace’s employment. I find that this end date on these pages qualifies as personal information as defined by subsection 23(1)(b) of LA FOIP.
- [87] I find that the employment end date qualifies as personal information as defined by subsection 23(1)(b) of LA FOIP. The date appears on the drafts of the agreement on pages 68a, 77a, and 82a. However, I do not find that the remainder of the contents of this

agreement qualifies as personal information as defined by subsection 23(1)(b) of LA FOIP. The terms of the agreement do not include anything that is personal in nature.

[88] I find that the screen shot of the terms in the Google search bar at the top of pages 105 and 106 qualifies as personal information as defined by subsection 23(1) of LA FOIP.

[89] I find that the City has not met its obligation under section 8 of LA FOIP.

[90] I find that the email by a private citizen on pages 114 and 115 qualifies as personal information as defined by subsection 23(1)(f) of LA FOIP.

[91] I find that the email by a private citizen on page 127 qualifies as personal information as defined by subsection 23(1)(f) of LA FOIP.

[92] I find that the City has not considered subsection 28(2)(n)(i) of LA FOIP.

[93] I find that the City has not considered subsection 28(2)(s) of LA FOIP and subsection 10(g)(ii) of the LA FOIP Regulations.

[94] I find that following can be exempt pursuant to subsection 16(1)(b) of LA FOIP as they contain consultations or deliberations involving City employees:

- body of email dated November 19, 2018, timestamped 5:09pm on pages 1, 4, 7, 15, 16, 22,
- body of email dated November 19, 2018 timestamped 5:11pm on pages 4, 7, 15, 22,
- body of email dated November 20, 2018 timestamped 10:22am on pages 3, 6, 14, 21,
- body of email dated November 20, 2018 timestamped 11:05am on pages 6, 14, 20,
- body of email dated November 20, 2018 timestamped 11:22am on pages 13, 20,
- body of email dated November 20, 2018 timestamped 11:57am on pages 13, 19,
- body of email dated November 20, 2018 timestamped 2:10pm on page 19,
- body of email dated November 22, 2018 timestamped 1:55 on page 25,
- attachments to the email dated November 21, 2018 timestamped 3:10pm as the attachments contain consultations or deliberations between City employees on pages 40 to 44 and pages 46 to 47,

- body of email dated November 26, 2018 timestamped 10:16am on page 63,
- attachment to the email dated November 26, 2018 timestamped 10:16am on pages 64 to 65,
- body of email dated November 26, 2018 timestamped 10:25am on page 66,
- body of email dated November 26, 2018 timestamped 12:58pm on pages 71 and 72,
- body of email dated November 26, 2018 timestamped 1:38pm on page 74,
- body of email dated November 26, 2018 timestamped 1:47pm on page 75.

[95] I find that subsection 16(1)(a) of LA FOIP does not apply to the email headers or email signatures that appear on pages 13 to 17, 19 to 23, 25, 63 to 65, 66 to 67, and 71 to 74. This is because neither the email headers nor the email signatures qualify as advice, proposals, recommendations, analyses or policy options.

[96] I find that subsection 16(1)(a) of LA FOIP applies to the bodies of emails that appear on pages 9 to 12. The contents qualify as analysis and recommendations. Further, they were developed by or for the City.

[97] I find that subsection 16(1)(a) of LA FOIP applies to pages 117 to 120.

[98] I find that subsection 16(1)(a) of LA FOIP applies to the body of the email on page 125.

[99] I find that subsection 21(a) of LA FOIP applies to the records as described in the City's schedule of records.

V RECOMMENDATIONS

[100] I recommend that the City withhold the headers of the letters on pages 64, 69, 78, 83, and 90 and 98 pursuant to subsection 28(1) of LA FOIP.

[101] I recommend that the City withhold the names, email addresses, and the email of the two private citizens on pages 114 and 115 pursuant to subsection 28(1) of LA FOIP.

[102] I recommend that the City withhold the name, email address, the two phone numbers, and the email of the private citizen on pages 126 and 127 pursuant to subsection 28(1) of LA FOIP.

[103] I recommend that the City withhold the body of the email dated November 23, 2018 timestamped 8:34am on pages 53, 55, and 60 pursuant to subsection 28(1) of LA FOIP.

[104] I recommend that the City withhold the emails on pages 59, 60, and 61 pursuant to subsection 28(1) of LA FOIP.

[105] I recommend that the City withhold the third sentence in the email dated November 26, 2018 timestamped 6:43pm on page 95 pursuant to subsection 28(1) of LA FOIP.

[106] Even though I found that subsection 28(1) of LA FOIP applies to the lump sum payments on pages 64, 69, 78, 83, 90 and 98, I recommend the City determine if such information can be released pursuant to subsection 28(2)(n)(i) of LA FOIP or pursuant to subsection 28(2)(s) of LA FOIP and subsection 10(g)(ii) of the LA FOIP Regulations

[107] Even though I found that subsection 28(1) of LA FOIP applies to the employment end date of pages 68a, 77a, and 82a, I recommend the City determine if such information can be released pursuant to subsection 28(2)(n)(i) of LA FOIP or pursuant to subsection 28(2)(s) of LA FOIP and subsection 10(g)(ii) of the LA FOIP Regulations.

[108] I recommend that the City withhold the screen shot of the terms in the Google search bar at the top of pages 105 and 106 pursuant to subsection 28(1) of LA FOIP.

[109] I recommend that the City withhold the following pursuant to subsection 16(1)(b) of LA FOIP:

- body of email dated November 19, 2018, timestamped 5:09pm on pages 1, 4, 7, 15, 16, 22,
- body of email dated November 19, 2018 timestamped 5:11pm on pages 4, 7, 15, 22,

- body of email dated November 20, 2018 timestamped 10:22am on pages 3, 6, 14, 21,
- body of email dated November 20, 2018 timestamped 11:05am on pages 6, 14, 20,
- body of email dated November 20, 2018 timestamped 11:22am on pages 13, 20,
- body of email dated November 20, 2018 timestamped 11:57am on pages 13, 19,
- body of email dated November 20, 2018 timestamped 2:10pm on page 19,
- body of email dated November 22, 2018 timestamped 1:55 on page 25,
- attachments to the email dated November 21, 2018 timestamped 3:10pm as the attachments contain consultations or deliberations between City employees on pages 40 to 44 and pages 46 to 47,
- body of email dated November 26, 2018 timestamped 10:16am on page 63,
- attachment to the email dated November 26, 2018 timestamped 10:16am on pages 64 to 65,
- body of email dated November 26, 2018 timestamped 10:25am on page 66,
- body of email dated November 26, 2018 timestamped 12:58pm on pages 71 and 72,
- body of email dated November 26, 2018 timestamped 1:38pm on page 74,
- body of email dated November 26, 2018 timestamped 1:47pm on page 75.

[110] I recommend that the City withhold the bodies of the emails on pages 9 to 12 pursuant to subsection 16(1)(a) of LA FOIP.

[111] I recommend that the City withhold pages 117 to 120 pursuant to subsection 16(1)(a) of LA FOIP.

[112] I recommend that the City withhold the body of the email on page 125.

[113] I recommend that the City withhold the records as described in the City's schedule of records pursuant to subsection 21(a) of LA FOIP.

[114] I recommend that the City release the remainder of the records to which I have not found an exemption to apply.

Dated at Regina, in the Province of Saskatchewan, this 14th day of August, 2020.

Ronald J. Kruzeniski, Q.C.
Saskatchewan Information and Privacy
Commissioner