



## **REVIEW REPORT 085-2021**

### **Town of Birch Hills**

**October 26, 2021**

#### **Summary:**

The Applicant made an access to information request to the Town of Birch Hills (Town), which denied the Applicant access to the records pursuant to sections 14(1)(d), 18(1)(d) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Town also asked the Commissioner to consider discontinuing the review as frivolous and vexatious pursuant to section 39(2)(a) of LA FOIP. The Commissioner found the circumstances to discontinue the review as frivolous and vexatious pursuant to section 39(2)(a) of LA FOIP did not exist. The Commissioner also found the Town properly applied section 28(1) of LA FOIP to some parts of the record but not to others, and that it did not properly apply sections 14(1)(d) and 18(1)(d) of LA FOIP to the records. The Commissioner recommended the Town continue to withhold and release the records accordingly.

#### **I BACKGROUND**

- [1] On March 15, 2021, the Town of Birch Hills (Town) received an access to information request from the Applicant for the following:

Correspondence pertaining to multi unit water and sewer billing to Sask [sic] Housing (Silver Birch) and [name of owner] [type of building] for 2019/2020/2021 including correspondence to the above mentioned outlining the reasons for the increase to water resulting from the motion passed by council at the December 16, 2020 council meeting to charge them according to the 06/19 water and sewer bylaw.

Any contracts entered into between the Town and water and sewer customers between January 2011 and March 2021 in which the Town charges rates other than the rates outlined in the Water and Sewer bylaws (04/15 and 06/19) in force at the time. In addition, any supporting council minute motions or documentation initiating or authorizing Town to enter into said contracts.

Copies of utility invoices for Jan. Feband [sic] December of each year from 2015 to 2021 showing the water and sewer rates and consumption for the Dairy Farm and any other water/sewer customer who the Town has entered into a contract with to provide water/sewer for a rate other than the rates listed in the approved water and sewer bylaws 04/14 and 06/19.

[2] In correspondence dated April 13, 2021, the Town responded to the Applicant as follows:

This letter is to advise you that the information you requested in your last Access to Information Request Form received March 15, 2021 is personal information. Section 28(1) of the *Local Authority Freedom of Information and [sic] Privacy Act* prevents the Town from sharing personal information ...

[3] On April 14, 2021, the Applicant asked my office to review the Town's decision.

[4] On April 19, 2021, my office provided notification to both the Applicant and the Town of my office's intent to undertake a review of the Town's decision to deny access to the records, in full, pursuant to section 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[5] In correspondence dated May 5, 2021, the Town advised the Applicant it would also be relying on sections 14(1)(d) and 18(1)(d) of LA FOIP to continue denying access to portions of the records.

[6] On May 27, 2021, the Town asked the Commissioner to discontinue this review pursuant to section 39(2)(a) of LA FOIP. I will consider this provision first in this review.

## **II RECORDS AT ISSUE**

[7] At issue are 40 pages of records the Town has withheld from the Applicant, in full. The Town applied its exemptions as follows:

- Pages 1 to 20 – section 18(1)(d) of LA FOIP;
- Pages 21 to 38 – section 28(1) of LA FOIP; and
- Pages 39 and 40 – section 14(1)(d) of LA FOIP.

### III DISCUSSION OF THE ISSUES

#### 1. Do I have jurisdiction?

[8] The Town is a “local authority” pursuant to section 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

#### 2. Did the Applicant request this review on grounds that are frivolous or vexatious?

[9] The Town asked my office to consider discontinuing this review pursuant to section 39(2) of LA FOIP. As this is a preliminary consideration, I must review it prior to reviewing the other matters.

[10] Section 39(2)(a) of LA FOIP provides that the Commissioner can refuse to conduct a review or discontinue one, where the Commissioner is of the opinion the request for review is frivolous or vexatious (*IPC Guide to LA FOIP*, Chapter 3: “Access to Records”, updated: June 29, 2021, at page 110 (*Guide to LA FOIP*, Ch. 3). Section 39(2)(a) of LA FOIP provides as follows:

**39(2)** The commissioner may refuse to conduct a review or may discontinue a review if, in the opinion of the commissioner, the application for review:

(a) is frivolous or vexatious;

[11] “Frivolous” is typically associated with matters that are trivial or without merit, lacking a legal or factual basis or legal or factual merit; not serious; not reasonably purposeful; of little weight or importance (*Guide to LA FOIP*, Ch. 3, p. 110).

[12] “Vexatious” means without reasonable or probable cause or excuse. A request is vexatious when the primary purpose of the request is not to gain access to information, but to continually or repeatedly harass a public body in order to obstruct or grind a public body to a standstill. It is usually taken to mean with intent to annoy, harass, embarrass, or cause discomfort. A request is not vexatious simply because a government institution is annoyed

or irked because the request is for information the release of which may be uncomfortable for the government institution (*Guide to LA FOIP*, Ch. 3, p. 110).

[13] LA FOIP must not become a weapon for disgruntled individuals to use against a local authority for reasons that have nothing to do with the Act. In court proceedings, a vexatious proceeding means "... that the litigant's mental state goes beyond simple animus against the other side, and rises to a situation where the litigant is attempting to abuse or misuse the legal process" (*Jamieson v Denman*, 2004 ABQB 593 (CanLII), para. 127). In *Chutskoff v Bonora*, 2014 ABQB 389 (CanLII), Michalyshyn J identified a "catalogue" of features of vexatious litigation:

1. collateral attack;
2. hopeless proceedings;
3. escalating proceedings;
4. bringing proceedings for improper purposes;
5. initiating "busybody" lawsuits to enforce alleged rights of third parties;
6. failure to honour court-ordered obligations;
7. persistently taking unsuccessful appeals from judicial decisions;
8. persistently engaging in inappropriate courtroom behavior;
9. unsubstantiated allegations of conspiracy, fraud, and misconduct;
10. scandalous or inflammatory language in pleadings or before the court; and
11. advancing "Organized Pseudolegal Commercial Argument.

Any of these indicia are a basis to classify a legal action as vexatious.

(*Guide to LA FOIP*, Ch. 3, pp. 110 - 111)

[14] When considering if a request for review was made on grounds that are frivolous or vexatious, I am determining if there is a pattern or type of conduct that amounts to an abuse of the right of access. Depending on the nature of the case, one factor alone or multiple factors in concert with each other can lead to a finding that a request is an abuse of the right of access. The following are the factors considered when determining if there is a pattern or type of conduct that amounts to an abuse of the right of access:

- **Number of requests:** is the number excessive? Where the volume of requests interferes with the operations of a government institution it can be argued the requests are excessive. In order to interfere with operations, the volume of requests must obstruct or hinder the range of effectiveness of the government institution's activities.

- **Nature and scope of the requests:** are they excessively broad and varied in scope or unusually detailed? Are they identical to or similar to previous requests?
- **Purpose of the requests:** are the requests intended to accomplish some objective other than to gain access? For example, are they made for “nuisance” value, or is the applicant’s aim to harass the government institution or to break or burden the system?
- **Timing of the requests:** is the timing of the requests connected to the occurrence of some other related event, such as a court or tribunal proceeding?
- **Wording of the request:** are the requests or subsequent communications in their nature offensive, vulgar, derogatory or contain unfounded allegations? Offensive or intimidating conduct or comments by applicants is unwarranted and harmful. They can also suggest that an applicant’s objectives are not legitimately about access to records. Requiring employees to be subjected to and to respond to offensive, intimidating, threatening, insulting conduct or comments can have a detrimental effect on wellbeing.

*(Guide to LA FOIP, Ch. 3, pp. 111 - 112)*

[15] Both the Town and the Applicant provided arguments for section 39(2)(a) of LA FOIP.

[16] To support its position that the Applicant’s request was frivolous or vexatious, the Town stated as follows:

[The Applicant] continues to reiterate that the Town does not and would not reply to [their] inquiries. However, over the past years and with two different councils, they felt that [Applicant] had been answered on many different occasions ...[they] just did not like the answers [Applicant] was given. They felt they went over and above to work with the Condo Board and had many meetings to settle all issues.

Even though the issue has been settled and all releases signed, [Applicant] continues to corner council members and [they] continues to attend every council meeting to observe and attend the Town Office to review files as often as every two weeks. Although [Applicant] has every right to attend open meetings of Council and to review public documents in the office, [they] makes it [their] soul duty to criticize all decisions of council and find fault in council and administration procedures.

This behavior is inappropriate conduct that borders harassment of Council and Staff that includes slander and defamation of character. The correspondence and requests are frivolous and vexatious in nature and extremely repetitive. [They] repeatedly communicates with members of council at their homes and public places, as well as,

emails and text messages. [They] continues to belittle and slander previous council members and current staff to other members of the public.

The Town of Birch Hills wanted nothing more than to settle this matter in a reasonable manner with a reasonable member of the [board] and are very happy that everyone has come to a settlement. It is very apparent that [Applicant] is not happy with this outcome and has continued this inappropriate conduct. [Applicant] continues to contact any and all government agencies in hopes to obtain whatever support possible to hold the Town in any kind of contravention.

This request for review was initiated by [Applicant] because the Town refused to give out copies of individual utility bills by the request of the third party individuals. It has all now snowballed into a larger issue that falls under Section 39(2)(a) of the LA FOIP because [Applicant's] behavior is affecting Council's and Staff's professional and personal reputation and wellbeing.

[17] For their part, the Applicant stated as follows:

In 2017 it was brought to the Town's attention that they were not adhering to their current Water and Sewer Bylaw. In dealing with the Town on this issue it became apparent that they did not feel the need or recognize their obligation to fairly administer the Water and Sewer Bylaw as passed by local council and as approved by the Saskatchewan Municipal Board. In September 2018 the Town was informed of an email received from [Name], Director SMB confirming that "*the rates of the current bylaw should be applied to everyone in the same fashion*" and "*Municipalities are required to follow the bylaw that we approved.*"

After two years of deflection and rationalization, an Ombudsman investigation in August 2019 found the Town was not adhering to their own Bylaw and made the following 2 recommendations which can be found in the Ombudsman Saskatchewan Annual Report 2019 attached ...

...

Throughout this process I maintained respectful written correspondence but the refusal to answer simple questions to understand their stubborn noncompliance greatly eroded public trust. However, with the Town's acceptance of the Ombudsman recommendations I assumed that the Town now understood they were bound to follow their own bylaws, especially the ones which also require Provincial approval.

In December 2019 a new Water and Sewer Bylaw was passed by local council and the rates approved by the Saskatchewan Municipal Board. In January 2020 I became aware that despite passing a new Bylaw, the Town was still not charging all water and sewer customers according to the new approved bylaw. In February 2020, I wrote another letter to the Town asking why they were still not charging all water and sewer customers according to their bylaw, even after the Ombudsman investigation and the SMB directed them to – I received no response as to why. As a result an Access to Information was submitted to confirm whether or not the Town was billing all

customers only in accordance with the rates approved by the local council and the SMB. The information requested was provided proving the Town was charging 2 out of 3 multi-unit buildings *in contravention* to their approved bylaw resulting in one building continuing to be singled out. I assumed that exposing this wrong would have been sufficient enough for the Town to adjust the billing on all water and sewer customers but it was not. Several times throughout the summer I inquired as to whether the Town was charging according to their bylaws with no response. Throughout the years I also inquired about the [location] as there was no provision in the current bylaw for rural customers – I had spoken with the [location] in 2017 and [they] showed me [their] water bill – at that time I had noticed their rate was different than the bylaw. When I inquired I was told it was because they had a contract with the Town for different rates. I looked back through the council minutes and could find no motion or resolution by council to enter into a contract with the [location] for water. If a contract does exist The Municipalities Act Section 117 states:

*(1) Any person is entitled at any time during regular business hours to inspect and obtain copies of: (a) any contract approved by the council, any bylaw or resolution and any account paid by the council relating to the municipality;*

What started out to be a simple issue of one building being singled out to be charged contrary to the bylaw has exposed a much deeper issue of council and Administration refusing to provide public information and refusal to act within the authority of their own bylaws. If a contract does not exist, it exposes yet another problem.

Transparency and accountability are two of the most important aspects of Council and Administration. Provincial legislation requires that municipalities conduct their business in the public eye and when reasoning is replaced by rationalizing, red flags go up. At the June 23, 2021 regular meeting of council, 2 members of council put a motion on the floor to charge all water and sewer customers according to the approved current bylaw until a new bylaw is passed. The remaining 5 councillors voted NOT to follow their bylaw. The public asks “Why?” Is the refusal to grant access to public information protection of personal information or hiding facts from the public?

I respectfully submit this is not a frivolous request, it is based on facts and the result of the Town’s proven history of knowingly and purposefully charging some water and sewer customers in contravention to both the 2015 and the 2019 bylaws in spite of an Ombudsman investigation and direction from the SMB. This request is important in the road to ensuring our council and administration understand their roles and carry them out in the public forum.

This is not a vexatious request. According to Subsection 39(2)(a) of IPC Guide to LA FOIP, Chapter 3, Access to Records it notes: “A request is not vexatious simply because a local authority is annoyed or irked because the request is for information the release of which may be uncomfortable for the local authority.” I have reasonable cause to believe that the Town is still not acting within their approved authority. The defeat of a motion of the Town Council to follow the approved bylaw is a good indication. My request for access to information is to be assured that the elected council

is acting within their authority and that Administration is implementing and charging all water and sewer customers only with the authority granted by council under the bylaw approved by the SMB. According to Under [sic] Subsection 39(2)(a) of IPC Guide to LA FOIP, Chapter 3, Access to Records it notes: *“A request is not vexatious simply because a local authority is annoyed or irked because the request is for information the release of which may be uncomfortable for the local authority.”*

[18] In Review Report 053-2015, I stated at paragraph [25] that when considering if a request for review is frivolous or vexatious, it is important to consider the nature and scope of the records sought by an applicant. I further stated as follows:

[a] review of the requests may indicate a theme, pattern or type of conduct that indicates that access to records is not the intent of the Applicant. In many cases, ascertaining the applicant’s purpose requires the drawing of inferences from behavior as applicants seldom admit to a purpose other than access.

[19] In Review Report 053-2015, I also stated at paragraph [32] as follows:

[32] A request is made for the purpose other than to gain access if the Applicant is motivated not by a desire to obtain access, but by some other objective. Access to information legislation exists to ensure government accountability and to facilitate democracy. Therefore, where an Applicant’s motivation is fact finding or to obtain proof of wrong-doing these purposes cannot be considered unreasonable or illegitimate. Applicants may seek information to assist them in a dispute with a public body, or to publicize what they consider to be inappropriate or problematic decisions or processes undertaken by public bodies. On the contrary, if the Applicant is rolling forward grounds and issues into subsequent actions for the purpose of harassment, nuisance or to raise an issue already determined than the motivation may not be reasonable or legitimate.

[20] As such, my focus in this section of this Report is not on whether or not the Town followed its bylaws with respect to water rates, but rather if the Applicant’s actions with respect to their access to information requests could suggest their intent was other than to gain access to records.

[21] In its submission, the Town states the Applicant contacted Saskatchewan Water Corporation, Ombudsman Saskatchewan, and the Saskatchewan Municipal Board regarding their concerns, and added as follows:



On January 15, 2020, the Town received an email from [Applicant] with a letter attached that was not signed but stated it was from the [Name] Board but this letter was not on any sort of official letterhead. This 2 page letter stated all the same issues the Town had been dealing with over the past 2 years even though the Town received notification that the issue was resolved.

From the point of where the Town had settled the issue, we received the following correspondence from [Applicant]:

- January 15, 2020 letter (without letterhead, not signed)
- January 27, 2020 email
- February 8, 2020 request for information
- February 27, 2020 request for information
- February 28, 2020 letter of correspondence (on letterhead, not signed)
- April 8, 2020 letter of correspondence (on letterhead, not signed)
- May 7, 2020 Rural Roots Edition of the Prince Albert Daily Herald, [Applicant] reported an article where the title was; “Ombudsman: Town of Birch Hills acted contrary to water and sewer bylaw with condo corporation”
- May 9, 2020 letter of correspondence (on letterhead, not signed)
- May 12, 2020 letter of correspondence from Condo Legal Counsel that was initiated by [Applicant] without Condo Board’s knowledge
- October 5, 2020 letter of correspondence (on letterhead, signed by [Applicant])
- October 7, 2020 open letter sent out to the entire Town and RM of Birch Hills community
- November 3, 2020 email from Town’s solicitor stating [they] had been served with a Statement of Claim dated October 26, 2020

[22] I first note that LA FOIP deals with access to records. As such, from the list of correspondences provided by the Town, I note only two are access to information requests – those dated February 8, 2020 and February 27, 2020. This is in addition to the Applicant’s access to information request of March 15, 2021, which is the subject of this review. LA FOIP does not require a local authority to respond to questions, such as those asked by the Applicant in their correspondences. Rather, LA FOIP requires a local authority to provide records it has in its possession or control that are found to be responsive to an access to information request, subject to any exemptions that are found to apply. Having stated this, I still need to also consider the Applicant’s overall patterns of behaviour including their other communications with Town council.

[23] Upon review of the Applicant’s access to information requests, there appears to be some overlap in the timeframe with each access to information request, but each one involves

different properties or matters. As such, the Applicant's access to information requests are not repetitive.

[24] The Applicant's access to information requests also do not appear to be overly broad in scope; rather, they ask for exact types of records. I note the Applicant's access to information request of March 15, 2021, specifically asks for records after they felt the Town was not in compliance with the Ombudsman's investigation report in 2019. Failing to get a response from the Town on their questions, the Applicant sought specific records they felt would satisfy what they wanted to know; the denial of access to these records formed the basis of their request for this review.

[25] With respect to the timing of the access to information requests, I note the Applicant filed a statement of claim with the Town, and the Town stated it was, at the time, in mediation with the Applicant. While the Town has since confirmed the Applicant has discontinued their claim as of June 21, 2021, the timing of their access to information request could suggest they sought records in conjunction with their claim. The timing of the Applicant's access to information request would then appear reasonable and for a purpose.

[26] Finally, with respect to the wording of the three access to information requests in question, as well as other correspondence, I note that they do not contain any disrespectful or derogatory language. In its arguments, the Town claims the Applicant is slanderous, but did not give specific examples of the Applicant's alleged slanderous comments. While the Applicant's actions towards the Town's council members could be viewed as bothersome, the Town has not clearly shown how such actions cross a line into unwarranted or even unlawful behaviours. As such, there does not appear to be any issue with the Applicant's language or wording in their access to information requests, or with their associated actions.

[27] In conclusion, I do not find a pattern of conduct that amounts to an abuse of the right of access on the part of the Applicant in this matter. As such, I find the request for review is not frivolous or vexatious, and will not discontinue my review pursuant to section 39(2)(a) of LA FOIP.

[28] As I will continue my review, I will now consider the exemptions the Town has applied in order to deny the Applicant access to the records.

**3. Did the Town properly apply section 18(1)(d) of LA FOIP?**

[29] Section 18(1)(d) of LA FOIP provides as follows:

**18(1)** Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(d) a statement of a financial account relating to a third party with respect to the provision of routine services from a local authority.

[30] Section 18(1)(d) of LA FOIP is a mandatory, class-based exemption. It permits refusal of access in situations where a record contains a statement of a financial account relating to a third party with respect to the provision of routine services from a local authority (IPC *Guide to LA FOIP*, Chapter 4: “Exemptions from the Right of Access”, updated: April 29, 2021, at page 196 (*Guide to LA FOIP*, Ch. 4)).

[31] The following two-part test can be applied:

1. Is the record a statement of a financial account relating to a third party with respect to the provision of routine services?
2. Is the statement from a local authority?

[32] The Town has relied only on section 18(1)(d) of LA FOIP to deny access, in full, to pages 1 to 20 of the record.

***1. Is the record a statement of a financial account relating to a third party with respect to the provision of routine services?***

[33] A “statement” is a formal written or oral account, setting down facts, a document setting out the items of debit and credit between two parties. A “statement of a financial account” is not defined in LA FOIP. However, the following is helpful in interpreting what the Legislative Assembly intended by this phrase:

- A “statement of account” is a report issued periodically (usually monthly) by a creditor to a customer, providing certain information on the customer’s account, including the amounts billed, credits given, and the balance due; a document setting out the items of debit and credit between two parties.
- An “accounting” means a detailed statement of the debits and credits between parties to a contract or to a fiduciary relationship; a reckoning of monetary dealings.
- An “account” means a record of financial expenditure and receipts; a bill taking the form of such a record.
- “Financial” means of or pertaining to revenue or money matters.

*(Guide to LA FOIP, Ch. 4, p. 196)*

[34] “Relating to” should be given a plain but expansive meaning. The phrase should be read in its grammatical and ordinary sense. There is no need to incorporate complex requirements (such as “substantial connection”) for its application, which would be inconsistent with the plain unambiguous meaning of the words of the statute. “Relating to” requires some connection between the information and the provision of routine services (*Guide to LA FOIP, Ch. 4, p. 197*).

[35] “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. 197*).

[36] “Routine” means a regular course of procedure; an unvarying performance of certain acts; regular or unvarying procedure or performance (*Guide to LA FOIP, Ch. 4, p. 197*).

[37] “Services” means labour performed in the interest or under the direction of others; the performance of some useful act or series of acts for the benefit of another, usually for a fee; an intangible commodity in the form of human effort, such as labour, skill, or advice (*Guide to LA FOIP, Ch. 4, p. 197*).

[38] LA FOIP defines a “third party” as a person, including an unincorporated entity, other than an applicant or a local authority pursuant to section 2(k). A “government institution”, as defined under section 2(1)(d) of *The Freedom of Information and Protection of Privacy Act*, can also qualify as a third party for purposes of LA FOIP (*Guide to LA FOIP*, Ch. 4, p. 197).

[39] The Town describes pages 1 to 20 as being “Water Supply Agreements”. Upon review of the records, I note pages 1 to 13 are water supply agreements or attachments, while pages 14 to 20 are copies of Town council meeting minutes, including ones where council ostensibly discussed the water supply agreements. While the information relates to a third party and includes financial information, for the purposes of section 18(1)(d) of LA FOIP, the information is not a statement of accounting or an account of debits and credits, but rather an agreement that sets out the terms and conditions of what will be charged. I further note that sections 117(1)(a) and (d) of *The Municipalities Act* allow any person to inspect any contracts approved by council, as well as the minutes of council once council approves them; these sections of *The Municipalities Act* provide as follows:

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

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

...

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

[40] As such, the first part of the test is not met, and I find the Town did not properly apply section 18(1)(d) of LA FOIP to pages 1 to 20 of the record. As the Town has not applied any other exemptions to pages 1 to 20 of the record, I recommend the Town release these pages to the Applicant.

#### **4. Did the Town properly apply section 28(1) of LA FOIP?**

[41] 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.

[42] Section 28(1) of LA FOIP protects the privacy of individuals whose personal information may be contained within records responsive to an access to information request made by someone else. Section 28(1) of LA FOIP requires a local authority to have the consent of the individual whose personal information is in the record prior to disclosing it (*Guide to LA FOIP*, Ch. 4, p. 240).

[43] When dealing with information in a record that appears to be personal information, the first step is to confirm the information indeed qualifies as personal information pursuant to section 23 of LA FOIP. The Town denied access to pages 21 to 38 of the record, in full, pursuant to section 28(1) of LA FOIP, claiming it is “personal information” pursuant to section 23(1)(j) 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:

...

(j) information that describes an individual’s finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

[44] In Review Report 033-2017, I stated at paragraph [12] that two considerations can be made to determine if information is “personal information”:

1. Is there an identifiable individual? Identifiable individual means that it must be reasonable to expect that an individual may be identified if the information were disclosed. The information must reasonably be capable of identifying particular individuals because it either directly identifies a person or enables an accurate inference to be made as to their identity when combined with other available sources of information or due to the context of the information in the record.
2. Is the information personal in nature? Personal in nature means that the information reveals something personal about the individual. Information that relates to an individual in a professional, official or business capacity could only qualify if the information revealed something personal about the individual for example, information that fits the definition of employment history.

- [45] The Town stated it believed the information in question was about an identifiable individual because the Applicant had asked specifically for the water and sewer bills for the “Dairy Farm” (i.e. the Applicant would know the information relates to the owners of the dairy farm). The Town added the information would be personal in nature because it would reveal the financial activities of the “Dairy Farm”, or of those who own it.
- [46] Upon review of pages 21 to 38 of the record, it appears they are utility invoices between the Town and the dairy farm. The utility bill is addressed to the dairy farm, and lists the name of its owners, the address of the dairy farm, invoice date, account number, invoice number, billing period, meter reading, description of whether the amount is house or farm usage, unit price and totals. A registry search with Information Services Corporation indicates the dairy farm is incorporated as a business. The Town confirmed the utility bill is sent to the dairy farm and includes both a home and a farm use portion.
- [47] In Review Report 082-2019, 083-2019 concerning the Ministry of Health, I found at paragraphs [94] and [95] that “personal in nature” means personal to a particular person or to their private life, and not to their professional one. This would include, as I stated in that report, “operating in a context that is inherently of a business nature and not personal”. The dairy farm, as an incorporated entity, acts in a professional or business capacity. The farm use portion of the utility bill would then be related to business use.
- [48] In Review Report 033-2017 at paragraphs [26] to [29], I stated that the arrears/credits, totals due and water meter readings can be “personal in nature” because they indicate something about an individual – their water usage or habits. The home use portion of the utility bill, then, indicates the water usage or habits of the owners.
- [49] The portions of the utility bills that contain personal information, then, include the data that would reveal the owners’ home usage, which includes the readings for the home, unit cost and quantity for the home, unit price, and the portion of total cost affixed to the home usage. The remaining portions of the utility bills contain business and not personal information as defined by LA FOIP. As such, I find the Town properly applied section 28(1) of LA FOIP to the home use portion of the utility bills on pages 21 to 38 of the record as I have described

in this paragraph, but that it did not properly apply subsection 28(1) of LA FOIP to the remaining or business use portions of the utility bills on pages 21 to 38 as I have described in this paragraph. I recommend the Town continue to withhold the home use portions of the utility bills on pages 21 to 38 as I have described above pursuant to section 28(1) of LA FOIP, and release the remaining information on pages 21 to 38 of the record.

**5. Did the Town properly apply section 14(1)(d) of LA FOIP?**

[50] Section 14(1)(d) of LA FOIP provides as follows:

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

...

(d) be injurious to the local authority in the conduct of existing or anticipated legal proceedings;

[51] Section 14(1)(d) of LA FOIP is a discretionary harm-based exemption. It permits refusal of access in situations where release of a record could be injurious to the local authority in the conduct of existing or anticipated legal proceedings (*Guide to LA FOIP*, Ch. 4, p. 54).

[52] The following two-part test can be applied:

1. Do the proceedings qualify as existing or anticipated legal proceedings?
2. Could disclosure of the records be injurious to the local authority in the conduct of the legal proceedings?

[53] The Town applied section 14(1)(d) of LA FOIP to pages 39 and 40 of the record.

***1. Do the proceedings qualify as existing or anticipated legal proceedings?***

[54] “Legal proceedings” are any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration. It includes proceedings governed by rules of court or rules of judicial or quasi-judicial tribunals that can result in a judgement of a court or a ruling by a tribunal. Legal proceedings include all proceedings authorized or



sanctioned by law, and brought or instituted in a court or legal tribunal, for the acquiring of a right or the enforcement of a remedy (*Guide to LA FOIP*, Ch. 4, p. 55).

[55] To qualify for this exemption, the legal proceedings must be “existing or anticipated” as the provision uses these terms. “Anticipated” means more than merely possible; it should be regarded as probable (*Guide to LA FOIP*, Ch. 4, p. 55).

[56] In support of its reliance on section 14(1)(d) of LA FOIP, the Town stated as follows:

... The [name of corporation] filed a legal claim against the Town of Birch Hills regarding breach of charging according to Municipal Bylaw. [Applicant] was a Director of [name of corporation] at the time the claim was filed with the Court of Queen’s Bench and initiated the claim. The said correspondence [pages 39 and 40 of the record] is in regards to the other multi-unit property and their utility rates.

[57] The Town stated its solicitor received a Statement of Claim dated October 26, 2020. A review of the record indicates this is so. In follow up with the Town, the Town advised my office the Applicant discontinued their action against the Town on June 21, 2020, and provided a copy of the Discontinuance of Claim for review. As such, there are no existing or anticipated legal proceedings, and the first part of the test is not met. As both parts of the test must be met, I find the Town did not properly apply section 14(1)(d) of LA FOIP to pages 39 and 40.

[58] Having found this, I am mindful it is mandatory to withhold personal information pursuant to section 28(1) of LA FOIP and I will consider this section even where a local authority has not raised it.

[59] Page 39 is a letter addressed to the owner of the four-plex. In Review Report 176-2019, 177-2019, 262-2019, 263-2019 at paragraph [43], I stated that landlords act in a business capacity. This was consistent with what I also stated in Investigation Report 070-2018 at paragraph [17]. The Town confirmed the owner of the four-plex does not live in the four-plex, and is the landlord. As such, information in the letter, used in a business context, is business related and not personal in nature. This includes data elements such as the name and address of the landlord, which I have stated in many past reports, is business card

information, or information you would typically find on a business card. As such, I find section 28(1) of LA FOIP does not apply to page 39 and recommend the Town release it.

[60] Page 40 is a letter addressed to the manager of the local housing authority. The Government of Saskatchewan website states that local housing authorities, including Birch Hills Housing Authority, manage social housing on behalf of the Saskatchewan Housing Corporation ([saskatchewan.ca/residents/housing-and-renting/renting-and-leasing/rental-housing-for-people-with-low-incomes](http://saskatchewan.ca/residents/housing-and-renting/renting-and-leasing/rental-housing-for-people-with-low-incomes)). The Saskatchewan Housing Corporation is a prescribed government institution pursuant to the Appendix, Part I, of *The Freedom of Information and Protection of Privacy Act Regulations*. The local housing authority is represented by a board, while the assets are owned by the Saskatchewan Housing Corporation. Information relating to local housing authorities are, therefore, not the personal information of the housing managers. As such, I find that section 28(1) of LA FOIP does not apply to page 40 of the record and recommend the Town release it.

#### **IV FINDINGS**

[61] I find the Applicant's request for review is not frivolous or vexatious.

[62] I find the Town did not properly apply section 18(1)(d) of LA FOIP to pages 1 to 20 of the record.

[63] I find the Town properly applied section 28(1) of LA FOIP to pages 21 to 38 of the record as I have described at paragraph [49] of this Report. I also find the Town did not properly apply section 28(1) of LA FOIP to pages 21 to 38 of the record as I have described at paragraph [49] of this Report.

[64] I find the Town did not properly apply section 14(1)(d) of LA FOIP to pages 39 and 40 of the record, and that section 28(1) of LA FOIP also does not apply to these pages.

#### **V RECOMMENDATION**

[65] I recommend the Town release pages 1 to 40 of the record except as I have described at page [49] of this Report.

Dated at Regina, in the Province of Saskatchewan, this 26th day of October, 2021.

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