



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## REVIEW REPORT 003-2023

### Town of Langham

June 8, 2023

#### Summary:

The Applicant made an access to information request to the Town of Langham (Town). The Applicant was not satisfied with the Town's response and requested a review by the Commissioner. The Commissioner found the Town properly applied subsection 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the qualifications, background, education and work experience portion of page 1, pages 3 to 8, and the qualifications, background and experience portions of page 9 and the references on page 10. The Commissioner also found the Town properly applied subsection 18(1)(b) of LA FOIP to the remaining portions of the record where there is not personal information or the third parties have not consented to the information being released. The Commissioner recommended that within 30 days of issuance of this Report the Town release the portions of the proposal packages consented to by Consultant 1 and 2 to the Applicant and continue to withhold the remaining information. The Commissioner also recommended that the Town makes it clear, in an RFP process, whether all bids will be received explicitly in confidence.

#### I BACKGROUND

- [1] The Town of Langham (Town) received the Applicant's access to information request on November 18, 2022, which stated in part as follows:

Please provide any and all quotes received in relation to the following motions:  
December 13th, 2021: 428/2021

[Name removed]: THAT Council agrees to hire LADR HR & Leadership Consulting to assist with the upcoming CUPE [union local number removed] negotiations.

AND

46/2022

[Name removed]: THAT the Council of the Town of Langham approved the agreement for services as provided for by LADR HR & Leadership Consulting regarding the provision of human and labour relations services as presented.

- [2] On December 28, 2022, the Applicant contacted my office as they had not received a response to their request. I note that the Town did not notify the Applicant it was extending the response time. Through my office's early resolution process, the Town provided a response to the Applicant on January 4, 2023.
  
- [3] In its January 4, 2023 decision letter, the Town denied access to the record in full pursuant to subsections 18(1)(b) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The decision letter also advised the Applicant that LA FOIP does not apply to material that is a matter of public record pursuant to subsection 3(1)(b) of LA FOIP.
  
- [4] The Applicant was not satisfied with the Town's response. Therefore, by email on January 4, 2023, the Applicant requested a review of the Town's decision to deny access to the record.
  
- [5] On January 26, 2023, my office notified the Town and the Applicant that it would be undertaking a review and invited both parties to make a submission. As the Town raised a third party exemption – subsection 18(1)(b) of LA FOIP, my office also notified the third parties on January 26, 2023.
  
- [6] The Town provided my office with its submission on March 28, 2023. The Applicant provided my office with a submission on January 30, 2023. My office received submissions from a third party, Claymore Consulting [Claymore], on January 23, 2023 and from another third party, LADR HR Consulting [LADR], on February 20, 2023.

## **II RECORDS AT ISSUE**

- [7] The record totals 11 pages that the Town has withheld in full. In its submission, the Town advised as follows:

The Town does not provide submissions on section 3(1)(b) relating to the Request or the Response as the Request was not denied on the basis of LAFOIP section 3(1)(b). The paragraph in the Response noting section 3(1)(b) was general information and was not a ground for denial of the Request. The Town will remove this language in future responses unless the context requires otherwise.

[8] Subsection 3(1)(b) of LA FOIP is, therefore, not at issue in this Report.

[9] When the Town provided my office with the record and submission it also raised subsections 17(1)(d) and (e) of LA FOIP. The Town did not raise these exemptions in its January 4, 2023 decision letter to the Applicant.

[10] My office's [\*Rules of Procedure\*](#) (effective December 1, 2018, revised December 8, 2022) states, in part, under section 2-4(3):

... Discretionary exemptions, not included in the head's decision under FOIP/LAFOIP, will not be considered by the commissioner's office unless there are exceptional circumstances.

[11] Subsections 17(1)(d) and (e) of LA FOIP are discretionary exemptions. As the Town did not raise these exemptions in its January 4, 2023 decision letter, I will not consider them in this review.

[12] As such, this review will only consider if subsections 18(1)(b) and 28(1) of LA FOIP apply to the record.

### **III DISCUSSION OF THE ISSUES**

#### **1. Do I have jurisdiction?**

[13] The Town is a "local authority" pursuant to subsection 2(1)(f)(i) of LA FOIP. The third parties are each a "third party" pursuant to subsection 2(1)(k) of LA FOIP. Therefore, I find I have jurisdiction to undertake this review.

**2. Does subsection 28(1) of LA FOIP apply to the record?**

[14] The Town has fully applied subsection 28(1) of LA FOIP to pages 1 to 11.

[15] Subsection 28(1) of LA FOIP provides:

**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.

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

[17] Section 28 of LA FOIP only applies to personal information as defined by subsection 23(1) of LA FOIP. However, the list provided in subsection 23(1) of LA FOIP is not meant to be exhaustive as there can be other types of information that would qualify as personal information that are not listed.

[18] In order to qualify as personal information, the information must 1) be about an identifiable individual; and 2) be personal in nature. Information is about an “identifiable individual” if the individual can be identified from the information (e.g., their name is provided) or if the information, when combined with information otherwise available, could reasonably allow the individual to be identified. To be “personal in nature” means the information provides something identifiable about the individual (*Guide to LA FOIP*, Ch. 6, pp. 39-41).

[19] In its submission, the Town has argued that the RFP replies contain personal information.

[20] Subsection 23(1)(b) of LA FOIP provides:

**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;

- [21] “Education history” refers to any information regarding an individual’s schooling. This includes names of schools, colleges or universities attended, courses taken, and grades achieved (*Guide to LA FOIP*, Ch. 6, p. 49).
- [22] “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, information in a resume or leave transactions (*Guide to LA FOIP*, Ch. 6, p. 50).
- [23] On a portion of page 1, a consultant with LADR [Consultant 1] outlined their qualifications, including background, education, and work experience. Pages 3 to 8 are the resume of Consultant 1 which in its entirety is their education, work experience, and former job duties. They have also included references who can attest to what has been provided in the resume. This information qualifies as personal information pursuant to subsection 23(1)(b) of LA FOIP.
- [24] A consultant with Claymore [Consultant 2] has included their qualifications, background and previous experience on page 9 and references that can attest to this on page 10. This also constitutes personal information pursuant to subsection 23(1)(b) of LA FOIP.
- [25] The remaining information that has been withheld on these pages is the proposal bids and not the educational and work history background of the consultant. Therefore, this does not constitute personal information and I will consider if subsection 18(1)(b) of LA FOIP applies to this information.
- [26] I find the Town properly applied subsection 28(1) of LA FOIP to the qualifications, background, education and work experience portion of page 1, pages 3 to 8, the qualifications, background and experience portions of page 9, and the references on page

10. I recommend the Town continue to withhold this information pursuant to subsection 28(1) of LA FOIP.

[27] As I have found that subsection 28(1) of LA FOIP has applied to portions of information found on pages 1, 9 and 10 and fully applies to pages 3 to 8, I will not be considering if subsection 18(1)(b) of LA FOIP applies to this information.

**3. Does subsection 18(1)(b) of LA FOIP apply to the record?**

[28] The Town has applied subsection 18(1)(b) of LA FOIP to the record in full; however, as noted above, I will only be considering if it applies to a portion of page 1, page 2, a portion of page 9, a portion of page 10 and page 11.

[29] Subsection 18(1)(b) of LA FOIP provides:

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

...

(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to the local authority by a third party;

[30] Subsection 18(1)(b) of LA FOIP is a mandatory, class-based exemption. It permits refusal of access in situations where a record contains financial, commercial, scientific, technical or labour relations information that was supplied in confidence to a local authority by a third party (*Guide to LA FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 29, 2021, [*Guide to LA FOIP*, Ch. 4], at p. 170).

[31] To determine if subsection 18(1)(b) of LA FOIP applies to the record, the following three-part test must be met:

1. Is the information financial, commercial, scientific, technical or labour relations information of a third party?
2. Was the information supplied by the third party to a local authority?

3. Was the information supplied in confidence implicitly or explicitly?

(*Guide to LA FOIP*, Ch. 4, pp. 170-174)

[32] I will now consider each part of the test.

***1. Is the information financial, commercial, scientific, technical or labour relations information of a third party?***

[33] In its submission, the Town asserts the information qualifies as commercial information. The submission states, in part:

The commercial information in the RFP Replies, as sought in the RFP, includes information on education, general past work experience, small town bargaining unit-specific past work experience, proposed methods, strategies, and bargaining tactics, and pricing structure.

[34] “Commercial information” means information relating to the buying, selling or exchange of merchandise or services. This includes third party associations, past history, references and insurance policies and pricing structures, market research, business plans, and customer records (*Guide to LA FOIP*, Ch. 4, p. 164).

[35] From a review of the record, it is third party bid packages in response to the Town’s request for proposal (RFP). My office has considered if this type of information qualifies as commercial information in several past reports. Subsection 19(1)(b) of *The Freedom of Information and Protection of Privacy Act* is significantly similar to subsection 18(1)(b) of LA FOIP. In [Review Report 323-2021](#), my office stated at paragraphs [46] and [47]:

[46] In my office’s Review Report 031-2015 concerning Saskatchewan Government Insurance (SGI), I stated as follows at paragraph [32]:

I considered all of the submissions received. The Applicant argues that SGI should apply severing to the third party’s proposal packages. However, it is clear that the contents of the proposals as a whole were created by the third parties with the aim of winning contracts with SGI. Commercial information relates to a commercial enterprise, but it need not be proprietary in nature or have an independent market or monetary value. It is sufficient if the information is associated with the buying, selling or exchange of the entity’s goods or services. **The information in the proposals relates to the buying or selling of goods and services. Therefore, I**

**find that the entire proposal packages submitted by the third parties to SGI constitute third party commercial information...**

[Emphasis added]

[47] Upon review of the record, the information where Highways applied subsection 19(1)(b) of FOIP appears to be bid information that relates to the exchange of services, and so is commercial in nature. I am satisfied that commercial information is involved and will consider the second and third parts of the test.

[Emphasis in original]

[36] The record at issue is the third party bid packages in response to the Town's request for proposal. As my office has found in past reports, this qualifies as commercial information as it relates to the exchange of services.

[37] I will now consider the second part of the test.

***2. Was the information supplied by the third party to a local authority?***

[38] "Supplied" means provided or furnished. Information may qualify as "supplied" if it was directly supplied to a local authority by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party (*Guide to LA FOIP*, Ch. 4, p. 172).

[39] In its submission, the Town asserts, in part:

The RFP Replies were clearly supplied to the Town by third parties. [Names removed] are "third parties" in that they are not the Town nor the Applicant.

[40] In [Review Report 323-2021](#), my office stated as follows at paragraph [49]:

[49] Third parties who were interested in the competition related to this matter "supplied" information to Highways, a government institution, for consideration. In my office's [Review Report 236-2017](#) concerning Water Security Agency (WSA), I considered a similar circumstance at paragraph [39] whereby third-party vendors supplied bid information to WSA for consideration. I am satisfied the information was "supplied" by a third-party to Highways, which meets the second part of the test.

[41] Similarly in this matter, the third parties supplied the information to the Town in response to the RFP. Therefore, the second part of the test has been met.

[42] I will now consider the third part of the test.

***3. Was the information supplied in confidence implicitly or explicitly?***

[43] Before I discuss the third part of the test, I would like to note that my office received a submission from Consultant 1 and 2, that in part, addresses their views on the confidentiality of the RFP packages.

[44] Consultant 1 advised, in part:

...this email is to confirm that I have no concern with respect to the release of my response to the Town of Langham's RFP; however I would kindly request that my [curriculum vitae] as submitted to the Town not be released or that I have an opportunity to redact the detailed information contained therein....

[45] Consultant 2 advised, in part:

... The facts that I responded to the RFP and am a Labour Relations professional are not themselves necessary to retain in confidence...

[46] As the third parties have consented to the release of portions of their proposal packages, I recommend that within 30 days of issuance of this Report the Town release the portions of the proposal packages consented to by Consultant 1 and 2 to the Applicant.

[47] I will now consider the third part of the test for the remaining information.

[48] In its submission, the Town asserts the information was supplied implicitly in confidence by the third parties.

[49] "In confidence" usually describes a situation of mutual trust in which private matters are relayed or reported. Information obtained in confidence means that the supplier of the

information has stipulated how the information can be disseminated. In order for confidence to be found, there must be an implicit or explicit agreement or understanding of confidentiality on the part of both the local authority and the third party providing the information (*Guide to LA FOIP*, Ch. 4, p. 174).

[50] “Implicitly” means that the confidentiality is understood even though there is no actual statement of confidentiality, agreement, or other physical evidence of the understanding that the information will be kept confidential (*Guide to LA FOIP*, Ch. 4, p. 174).

[51] The expectation of confidentiality must be reasonable and must have an objective basis. Whether the information is confidential will depend upon its content, its purposes, and the circumstances in which it was compiled or communicated (*Guide to LA FOIP*, Ch. 4, p. 175).

[52] In its submission, the Town argued the RFPs were supplied implicitly in confidence as follows:

The purpose of the RFP was to deal with labour relations within the local authority and the nature of the information sought in the RFP Replies regards labour relations and the collective bargaining that was to be taking place between the Town and its employees. By extension, the Request seeks information directly connected to the labour relations and the collective bargaining that was to and would be taking place between the Town and its employees.

...

**The Town submits that a reasonable person would consider the nature of information to be addressed in the RFP Replies and approach on ideal outcomes sought in the RFP to be confidential. The content of the RFP Replies deals with information regarding management of Town labour relations and the purpose of the RFP Replies was to communicate strategies to be employed by the proponent in their dealings with the Town and on behalf of the Town during the CUPE negotiations.** As discussed below, the information subject to the Request has consistently been dealt with by the Town in a sensitive and protected manner since the Notice to Bargain letter from CUPE [union local number removed] was received on September 13, 2021.

...

**The RFP, RFP Replies, and labour relations negotiations were and remain restricted to in-camera (private) discussion at Town Council meetings.** The in-

camera (private) sessions began after the Town received the Notice to Bargain from CUPE dated September 13, 2021. The Town accepted the Notice to Bargain pursuant to the September 13, 2021 Regular Council Meeting Motion 278/2021 ...

...

The RFP itself was the product of in-camera (private) discussion at numerous Regular Council meetings since September 13, 2021, including the Regular Council meeting on November 8, 2021. The out of camera discussion on the Notice to Bargain from CUPE was restricted to putting a motion from the in-camera (private) session on the record.

...

**The conversations around the RFP, RFP Replies, and union negotiations have all been specifically in-camera (private) and withheld from public access.** The information sought by the Applicant in the Request have been consistently unavailable from sources to which the public has access.

...

[T]he Town submits that its good faith obligation implicitly included and continues to include the confidentiality of the RFP Replies provided....

[Emphasis added]

- [53] In its submission, the Town provided my office with copies of its September 13, 2021 and November 8, 2021 Council Meeting Agenda and Minutes that demonstrates these issues were discussed *in camera*.
- [54] In its submission, Consultant 2 asserted, "...I consider that response to be proprietary business information, disclosure of which would compromise my privacy and could compromise my business."
- [55] From a review of the arguments put forth by the Town and reiteration of the expectation of confidentiality put forward by Consultant 2, I am satisfied that the remaining information was supplied implicitly in confidence.
- [56] Therefore, I find the Town properly applied subsection 18(1)(b) of LA FOIP to the remaining portions of the record where there is not personal information or the third parties have not consented to the information being released. I recommend the Town continue to withhold this information.

[57] In [Review Report 011-2018](#), my office stated at paragraph [20]:

[20] So that public bodies, third parties as bidders and my office do not have to determine whether bids are made implicitly in confidence, I recommend that the City and other public bodies make it clear, in a bidding process, whether all bids will be received explicitly in confidence. This can be done in the tender form, an RFP or on the City's or a public bodies' website.

[58] I recommend the Town take the above steps going forward, so the expectation of confidentially issue is dealt with at the beginning of the RFP process.

#### **IV FINDINGS**

[59] I find I have jurisdiction to undertake this review.

[60] I find the Town properly applied subsection 28(1) of LA FOIP to the qualifications, background, education and work experience portion of page 1, pages 3 to 8, and the qualifications, background and experience portions of page 9 and the references on page 10.

[61] I find the Town properly applied subsection 18(1)(b) of LA FOIP to the remaining portions of the record where there is not personal information or the third parties have not consented to the information being released.

#### **V RECOMMENDATIONS**

[62] I recommend that within 30 days of issuance of this Report the Town release the portions of the proposal packages consented to by Consultant 1 and 2 to the Applicant and continue to withhold the remaining information.

[63] I recommend that the Town makes it clear, in an RFP process, whether all bids will be received explicitly in confidence.

Dated at Regina, in the Province of Saskatchewan, this 8th day of June, 2023.

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