



REVIEW REPORT 012-2021

Saskatoon Police Service

April 28, 2022

Summary: The Applicant requested a review of the Saskatoon Police Service's (SPS) decision to withhold portions of the record pursuant to sections 14(1)(c) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found section 14(1)(c) of LA FOIP applied to the withheld information found in Record 1 on page 6 and Record 2 on pages 3, 4, 5, 7 and 10 to 25. The Commissioner also found section 28(1) of LA FOIP applied to the information withheld in Record 1 on pages 2 to 5. The Commissioner recommended the SPS continue to withhold all the information in question.

I BACKGROUND

[1] On August 25, 2020, the Saskatoon Police Service (SPS) received the following access to information request from the Applicant:

I need a copy of any records against me as I'm now aware of defamation of character against me.

[2] By letter dated September 24, 2020, the SPS notified the Applicant that the 30-day response time was being extended an additional 30 days pursuant to section 12(1)(a)(ii) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] By letter dated October 30, 2020, the SPS responded to the Applicant's request, denying access to a portion of the record pursuant to sections 14(1)(c) and 28(1) of LA FOIP.

[4] The Applicant requested a review by my office on January 21, 2021. Through my office’s early resolution process, the scope of the review was clarified with the Applicant as being a review of the exemptions the SPS applied to the record and not the delayed response.

[5] On January 28, 2021, my office notified the SPS and the Applicant that my office would be undertaking a review and invited both parties to make a submission. The SPS provided my office with its submission on February 22, 2021. The Applicant provided my office with a submission on January 28, 2021.

II RECORDS AT ISSUE

[6] The record at issue and the exemptions claimed are described as follows:

Record Number	Description of Record	Page Numbers	Exemptions of LA FOIP claimed
1	General Occurrence Report 20999	Pages 2 – 5 (partially withheld)	28(1)
1	General Occurrence Report 20999	Page 6 (partially withheld)	14(1)(c); 28(1)
2	General Occurrence Report 94997	Pages 3 – 4 (fully withheld)	14(1)(c); 28(1)
2	General Occurrence Report 94997	Page 5 (partially withheld)	14(1)(c); 28(1)
2	General Occurrence Report 94997	Page 7 (partially withheld)	14(1)(c); 28(1)
2	General Occurrence Report 94997	Pages 10 – 11 (fully withheld)	14(1)(c); 28(1)
2	General Occurrence Report 94997	Pages 12 – 25 (fully withheld)	14(1)(c)

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[7] The SPS is a “local authority” pursuant to section 2(f)(viii.1) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

2. Does section 14(1)(c) of LA FOIP apply to the record?

[8] The SPS applied section 14(1)(c) of LA FOIP to information found in Record 1 on page 6, and in Record 2 on pages 3, 4, 5, 7 and 10 to 25.

[9] Section 14(1)(c) of LA FOIP provides:

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

...

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

[10] Section 14(1)(c) of LA FOIP permits refusal of access in situations where the release of a record could interfere with a lawful investigation or disclose information with respect to a lawful investigation (*Guide to LA FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 29, 2021 [*Guide to LA FOIP*, Ch. 4.], p. 52).

[11] In order to determine if this exemption applies, I will consider the following two-part test:

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

2. Does one of the following exist?

a. Could release of the information interfere with a lawful investigation?

b. Could the release disclose information with respect to a lawful investigation?

(*Guide to LA FOIP*, Ch. 4, pp. 52-53)

[12] A “lawful investigation” is an investigation that is authorized or required and permitted by law. When applying this exemption, the local authority should identify the legislation under which the investigation is occurring. The investigation can be concluded, active and ongoing or occurring in the future (*Guide to LA FOIP*, Ch. 4, p. 52).

[13] Section 14 of LA FOIP uses the word “could” versus “could reasonably be expected to” as seen in other provisions of LA FOIP. The threshold for “could” is somewhat lower than a reasonable expectation. The requirement for “could” is simply that the release of the

information could have the specified result. However, there still has to be the basis for asserting the harm could occur. If it is fanciful or exceedingly remote, the exemption should not be invoked (*Guide to LA FOIP*, Ch. 4, p. 52).

[14] For this exemption, the SPS is asserting that release of the information would disclose information with respect to a lawful investigation and not that it would interfere with a lawful investigation.

[15] For this part of the test to be met it is only necessary for the local authority to demonstrate that the information in the record is information with respect to a lawful investigation. “With respect to” are words of the widest possible scope and is probably the widest of any expression intended to convey some connection between two related subject matters (*Guide to LA FOIP*, Ch. 4, p. 53).

[16] In its submission, the SPS asserts:

...[Two] investigations concerning this request was [sic] conducted by [SPS] officers into a possible contravention of the *Criminal Code* by the Applicant and other individuals.

...

The SPS submits that the first part of the test is met, as the actions of the officers and creation of the occurrence reports constituted part of a lawful investigation.

[17] For each of the two separate investigations, the SPS provided my office with the sections of the *Criminal Code* in which the investigations were being conducted. The record related to General Occurrence Report 94995 is a criminal harassment investigation pursuant to section 264(1) of the *Criminal Code*. Furthermore, the record related to General Occurrence Report 20999 is a fraud investigation pursuant to section 380(1) of the *Criminal Code*. From a review of these sections of the *Criminal Code*, I am satisfied these are the appropriate sections under which the two lawful investigations occurred.

[18] In its submission the SPS also asserts:

... The information withheld in the records include statements provided by police in regards to the investigation, discussions between police and complainants, and information provided by complaints [sic] for the purpose of the investigation

[19] From a review of the withheld information, I am satisfied that the first part of the test has been met as the withheld information qualifies as a “lawful investigation”. Secondly, I am satisfied that the second part of the test has been met as the release of the withheld information could disclose information with respect to a lawful investigation.

[20] As both parts of the test have been met, I find section 14(1)(c) of LA FOIP applies to the withheld information found in Record 1 on page 6 and Record 2 on pages 3, 4, 5, 7 and 10 to 25.

[21] In addition to section 14(1)(c) of LA FOIP, the SPS has also applied section 28(1) of LA FOIP to information found in Record 1 on page 6 and Record 2 on pages 3, 4, 5, 7, 10 and 11. However, as I have found section 14(1)(c) of LA FOIP applies fully to the information found on these pages, I will not be considering if section 28(1) of LA FOIP applies to these pages.

3. Does section 28(1) of LA FOIP apply to the record?

[22] The SPS applied section 28(1) of LA FOIP to the remaining pages in Record 1 on pages 2 to 5.

[23] Section 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 exempt in accordance with this section or section 29.

[24] For section 28(1) of LA FOIP to apply, the information in question must first constitute “personal information” of someone other than the Applicant pursuant to section 23(1) of LA FOIP. Section 23(1) of LA FOIP defines what constitutes personal information.

[25] Based upon information provided from the SPS and a review of the record, it appears that sections 23(1)(a) and (e) of LA FOIP are engaged. Sections 23(1)(a) and (e) of LA FOIP provide:

23(1) Subject to subsection (1.1) and (2), “**personal information**” means personal information about an identifiable individual that is recorded in any form, and includes:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

...

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

[26] Information that has been withheld in Record 1 on pages 2, 4 and 5 is the sex and date of birth of identifiable individuals other than the Applicant. This qualifies as personal information pursuant to section 23(1)(a) of LA FOIP.

[27] The SPS has also withheld home, business and cellular telephone numbers and home and mailing addresses of an identifiable individual of a third party in Record 1 on page 3 who is involved in the *Criminal Code* investigation. This qualifies as personal information pursuant to subsection 23(1)(e) of LA FOIP.

[28] Therefore, I find section 28(1) of LA FOIP applies to the information withheld in Record 1 on pages 2 to 5.

IV FINDINGS

[29] I find section 14(1)(c) of LA FOIP applies to the withheld information found in Record 1 on page 6 and Record 2 on pages 3, 4, 5, 7 and 10 to 25.

[30] I find section 28(1) of LA FOIP applies to the information withheld in Record 1 on pages 2 to 5.

V RECOMMENDATION

[31] I recommend the SPS continue to withhold the information found in Record 1 on pages 2 to 6 and Record 2 on pages 3 to 5, 7 and 10 to 25.

Dated at Regina, in the Province of Saskatchewan, this 28th day of April, 2022.

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