



REVIEW REPORT 012-2023

Town of Langham

May 2, 2023

Summary:

The Town received an access to information request from the Applicant. The Town denied access to portions pursuant to subsections 16(1)(a), (b), 17(1)(d) and (f) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant asked the Commissioner to undertake a review. The Town later dropped its reliance on subsection 17(1)(f) of LA FOIP and added that some portions contained information that would be exempt pursuant to subsection 28(1) of LA FOIP. The Commissioner found the record at issue, a report, could be released pursuant to subsection 117(1)(c) of *The Municipalities Act*, subject to portions containing personal information pursuant to subsection 28(1) of LA FOIP. The Commissioner recommended the Town release the record to the Applicant accordingly.

I BACKGROUND

[1] On June 28, 2022, the Town of Langham (Town) received an access to information request pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) from the Applicant as follows:

I wish to receive a complete copy of the HMC operational report that was provided to the Town of Langham.

[2] In its section 7 decision letter dated September 9, 2022, the Town advised the Applicant it was withholding portions of the record pursuant to subsections 16(1)(a), (b), 17(1)(d) and (f) of LA FOIP.

[3] On January 13, 2023, the Applicant asked my office to review the Town's decision.

[4] On February 15, 2023, my office notified the Applicant and the Town that my office would be undertaking a review of the Town's exemptions.

II RECORDS AT ISSUE

[5] The portions of the record released to the Applicant indicate it is a report entitled, "Government and Operations Review..." (HMC Report). The HMC Report is 105 pages long; the Town denied access to portions of 66 pages pursuant to subsections 16(1)(a), (b), 17(1)(d) and (f) of LA FOIP. In its submission, the Town dropped its reliance on subsection 17(1)(f) of LA FOIP.

[6] The Town also raised subsection 28(1) of LA FOIP in its submission but did not include it in its response to the Applicant or on its index. As subsection 28(1) of LA FOIP is a mandatory provision pertaining to personal information, I will consider it in my review.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[7] The Town is a "local authority" pursuant to subsection 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did the Town properly apply subsections 16(1)(a), (b), 17(1)(d) of LA FOIP?

[8] The Town entered into a contract with HMC Management Inc. on July 26, 2021, to undertake a "governance and operations review". The result was the HMC Report, which HMC delivered to the Town on January 24, 2022. A portion of the HMC Report released to the Applicant states as follows:

Comments in this report are not intended nor should they be interpreted to be legal advice or opinion. Rather, this document is prepared to support Council's decisions on matters potentially impacting personnel and otherwise involving legal implications, and therefore is prepared to support Council's instruction of legal counsel as necessary to the deliberation and implementation of decisions arising in respect to these issues.

[9] As mentioned, the Town denied the Applicant access to portions pursuant to subsections 16(1)(a), (b) and 17(1)(d) of LA FOIP. I will also review if *The Municipalities Act* has any application and if there is any personal information pursuant to subsection 28(1) of LA FOIP.

Subsection 16(1)(a) of LA FOIP

[10] 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;

[11] Subsection 16(1)(a) of LA FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose advice, proposals, recommendations, analyses or policy options developed by or for a local authority (*Guide to LA FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 29, 2021 [*Guide to LA FOIP*, Ch. 4], p. 105).

[12] The *Guide to LA FOIP* (Ch. 4, pp. 105-108) outlines the following two-part test that can be applied:

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

Subsection 16(1)(b) of LA FOIP

[13] 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;

[14] Subsection 16(1)(b) of LA FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose consultations or deliberations involving officers or employees of a local authority. The provision is intended to allow persons having the responsibility to make decisions to freely discuss the issues before them to arrive at well-reasoned decisions. The intent is to allow such persons to address an issue without fear of being wrong, looking bad, or appearing foolish if their frank deliberations were to be made public (*Guide to LA FOIP*, Ch. 4, p. 112).

[15] The *Guide to LA FOIP* (Ch. 4, pp. 112-114) outlines the following two-part test that can be applied:

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

Subsection 17(1)(d) of LA FOIP

[16] Subsection 17(1)(d) of LA FOIP provides as follows:

17(1) Subject to subsection (3), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(d) information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the local authority;

[17] Subsection 17(1)(d) is a discretionary harm-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the local authority. The *Guide to LA FOIP* (Ch. 4, pp. 147-148) outlines the following two-part test that can be applied:

1. Are there contractual or other negotiations occurring involving the local authority?

2. Could release of the record reasonably be expected to interfere with the contractual or other negotiations?

The Municipalities Act

[18] Section 117 of *The Municipalities Act* provides 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;

(b) the statements maintained by the administrator in accordance with section 142 and the debentures register;

(b.1) the municipality's financial statements prepared in accordance with section 185 and auditor's report prepared in accordance with subsection 189(1);

(c) any report of any consultant engaged by or of any employee of the municipality, or of any committee or other body established by a council pursuant to clause 81(a), after the report has been submitted to the council, except any opinion or report of a lawyer; and

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

(2) Within a reasonable time after receiving a request, the administrator shall furnish the copies requested on payment of any fee that the council may fix.

(3) For the purposes of subsection (2), the fee set by council must not exceed the reasonable costs incurred by the municipality in furnishing the copies.

[Emphasis added]

[19] Subsection 117(1) of *The Municipalities Act* outlines various types of documents that a municipality is to make available to the public upon request. In this matter, it appears that subsection 117(1)(c) of *The Municipalities Act* has application. The HMC Report would qualify as "any report of any consultant engaged by or of any employee of the municipality". It does not contain any opinion of, nor was it completed by, a lawyer, and HMC presented it to Town council.

[20] In my office's [Review Report 121-2021](#) concerning the Rural Municipality of McKillop No. 220 (RM), I stated that a report on legal services prepared for and presented to the RM council was subject to release pursuant to subsection 117(1)(c) of *The Municipalities Act*. I follow the same approach here and find that the HMC Report is subject to release pursuant to subsection 117(1)(c) of *The Municipalities Act*. As such, I do not need to continue my review of subsections 16(1)(a), (b) and 17(1)(d) of LA FOIP. Prior to making recommendations on release, however, I will consider if any portions of the HMC Report contain personal information pursuant to subsection 28(1) of LA FOIP that should be withheld.

[21] Subsection 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.

[22] 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 FOIP*, Ch. 6], p. 163).

[23] The first step is to determine if personal information is involved as defined by subsection 23(1) of LA FOIP. The Town submits that personal information is involved as defined by subsections 23(1)(b), (f) and (h) of LA FOIP as follows:

- Page 9, severance 1 - 23(1)(h)
- Page 84, severance 1 - 23(1)(b), (h)
- Page 85, severance 1 – 23(1)(h)
- Page 86, severance 1 – 23(1)(h)
- Page 87, severance 2, 3, and 4 – 23(1)(f)
- Page 88, severance 1 – 23(1)(f)
- Page 89, severance 1 and 2 – 23(1)(h)
- Page 90, severance 1 – 23(1)(h)
- Page 91, severance 1 – 23(1)(h)

- Page 92, severance 1 – 23(1)(h)
- Page 93, severance 1– 23(1)(h)

[24] Upon review, pages 87 (severances 2, 3 and 4) and 88 (severance 1) contain views or opinions that the CAOs had about the current state. In my office’s [Review Report 09/2014](#) concerning the City of Saskatoon, I stated at paragraph [15] that views or opinions of a councilor provided in their professional capacity is not personal information as defined by subsection 23(1)(f) of LA FOIP. I take the same approach here and find that pages 87 (severances 2, 3 and 4) and 88 (severance 1) do not contain personal information. As such, subsection 28(1) of LA FOIP does not apply to these pages.

[25] Pages 9 (severance 1), 84 (severance 1), 85 (severance 1), 86 (severance 1), 89 (severance 1 and 2), 90 (severance 1), 91 (severance 1), 92 (severance 1) and 93 (severance 1) all contain information that would pertain to an individual’s employment history or that could be considered information for a personnel file, which is personal information as defined by subsection 23(1)(b) 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;

[26] I find, therefore, that subsection 28(1) of LA FOIP applies to pages 9 (severance 1), 84 (severance 1), 85 (severance 1), 86 (severance 1), 89 (severance 1 and 2), 90 (severance 1), 91 (severance 1), 92 (severance 1) and 93 (severance 1).

[27] In conclusion, I recommend the Town release the HMC Report to the Applicant, but that it continue to withhold the severed portions on pages 9 (severance 1), 84 (severance 1), 85 (severance 1), 86 (severance 1), 89 (severance 1 and 2), 90 (severance 1), 91 (severance 1), 92 (severance 1) and 93 (severance 1) pursuant to subsection 28(1) of LA FOIP.

IV FINDINGS

[28] I find I have jurisdiction.

[29] I find that the HMC Report can be released to the Applicant pursuant to subsection 117(1)(c) of *The Municipalities Act*, and so there is no need to review the Town's reliance on subsections 16(1)(a), (b) and 17(1)(d) of LA FOIP.

[30] I find that subsection 28(1) of LA FOIP applies to the severed portions on pages 9 (severance 1), 84 (severance 1), 85 (severance 1), 86 (severance 1), 89 (severance 1 and 2), 90 (severance 1), 91 (severance 1), 92 (severance 1) and 93 (severance 1).

V RECOMMENDATION

[31] I recommend the Town release the HMC Report to the Applicant, but that it continue to withhold pages 9 (severance 1), 84 (severance 1), 85 (severance 1), 86 (severance 1), 89 (severance 1 and 2), 90 (severance 1), 91 (severance 1), 92 (severance 1) and 93 (severance 1) pursuant to subsection 28(1) of LA FOIP within 30 days of issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 2nd day of May, 2023.

Ronald J. Kruzeniski, KC
Saskatchewan Information and Privacy
Commissioner