



## **REVIEW REPORT 019-2022**

### **Living Sky School Division No. 202**

**January 17, 2023**

#### **Summary:**

The Applicant was dissatisfied with the response they received to the access to information request they made to Living Sky School Division No. 202 (School Division) and requested a review by the Commissioner. The Commissioner found the School Division did not comply with section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act*. The Commissioner recommended the School Division be mindful of its obligation to respond to access to information requests within the legislated timeframe.

#### **I BACKGROUND**

- [1] The Applicant made an access to information request to the Living Sky School Division No. 202 (School Division) on November 1, 2021, requesting access to records related to a particular matter. The inclusive dates for the request were September 25, 2021 to October 26, 2021.
- [2] On January 27, 2022, the Applicant requested a review by my office. Upon receiving the request, my office identified that the School Division did not provide the Applicant with a section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) decision letter (section 7 decision).
- [3] Through my office's early resolution process, the School Division provided the Applicant with a section 7 decision dated February 28, 2022. This letter advised the Applicant that a portion of the information was being withheld pursuant to section 20 and subsections 21(b) and (c) of LA FOIP.

[4] By emails dated March 31, 2022, my office notified the Applicant and the School Division of my office's intention to undertake a review and invited both parties to provide a submission. The reasons for review were:

- Why the School Division did not provide the Applicant with a section 7 decision letter within the legislated 30 day timeline.
- How parts of the record qualify as exempt from release pursuant to section 20 and subsections 21(b) and (c) of LA FOIP.

[5] My office received a submission from the School Division on August 2, 2022. My office received communications from the Applicant throughout the review.

[6] Through the course of the review, the School Division advised my office it was lifting its reliance on section 20 and subsections 21(b) and (c) of LA FOIP to the record. On December 16, 2022, the School Division emailed the Applicant the full record. As a result, section 20, and subsections 21(b) and (c) of LA FOIP are no longer part of this review.

[7] On December 19, 2022, the Applicant advised my office they wished to continue with their review of the School Division's lack of section 7 decision within the legislated 30 days.

## **II RECORDS AT ISSUE**

[8] This is a review of why the School Division did not provide the Applicant with a section 7 decision within the legislated 30 days. Therefore, there are no records at issue.

## **III DISCUSSION OF THE ISSUES**

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

[9] The School Division is a "local authority" pursuant to subsection 2(f)(viii) of LA FOIP. Therefore, I find I have jurisdiction to conduct this review.

**2. Did the School Division comply with section 7 of LA FOIP?**

[10] Section 5 of LA FOIP provides as follows:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a local authority.

[11] Section 7 of LA FOIP provides:

7(1) Where an application is made pursuant to this Act for access to a record, the head of the local authority to which the application is made shall:

(a) consider the application and give written notice to the applicant of the head's decision with respect to the application in accordance with subsection (2); or

(b) transfer the application to another local authority or to a government institution in accordance with section 11.

(2) The head shall give written notice to the applicant within 30 days after the application is made:

(a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;

(b) if the record requested is published, referring the applicant to the publication;

(c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;

(d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;

(e) stating that access is refused for the reason that the record does not exist;

(f) stating that confirmation or denial of the existence of the record is refused pursuant to subsection (4); or

(g) stating that the request has been disregarded pursuant to section 43.1 and setting out the reason for which the request was disregarded.

(3) A notice given pursuant to subsection (2) is to state that the applicant may request a review by the commissioner within one year after the notice is given.

(4) If an application is made with respect to a record that is exempt from access pursuant to section 14, 20 or 21 or subsection 28(1), the head may refuse to confirm or deny that the record exists or ever did exist.

(5) A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.

[12] Section 7 of LA FOIP provides that an applicant must receive a response from the local authority within 30 days and must contain certain elements, which are enumerated at subsections 7(2) and 7(3) of LA FOIP (*Guide to LA FOIP*, Chapter 3: “Access to Records”, updated June 29, 2021, [*Guide to LA FOIP*, Ch 3], p. 26).

[13] All responses provided to applicants pursuant to subsection 7(2) of LA FOIP must include a statement that advises an applicant of their right to request a review by my office. This requirement is addressed at subsection 7(3) of LA FOIP (*Guide to LA FOIP*, Ch 3, p. 26).

[14] My office refers to this as the section 7 decision letter as it summarizes the head’s decision as it relates to the access to information request. If the head does not send a section 7 decision letter within 30 days of the request, the access request is deemed to be refused pursuant to subsection 7(5) of LA FOIP.

[15] More than 30 days elapsed before the School Division provided the Applicant with its section 7 decision letter, and so it did not comply with section 7(2) of LA FOIP. As such, I find it did not comply with section 7 of LA FOIP.

[16] Regarding why it was late, the School Division addressed this as follows:

[School Division] did not provide the applicant with a formal response letter as we were transitioning accountability for Division Privacy Officer and I had not yet come up to speed on my obligations... I take personal responsibility for failure on this item.

[17] Going forward, I recommend the School Division be mindful of its obligation to respond to access to information requests within the legislated timeframe. To assist the School Division, I refer it to the [model template letters](#) for responding to access to information

requests developed by the Ministry of Justice and Attorney General. These template letters assist a local authority in properly responding to requests.

#### **IV FINDINGS**

[18] I find I have jurisdiction to conduct this review.

[19] I find the School Division did not comply with section 7 of LA FOIP.

#### **V RECOMMENDATION**

[20] I recommend the School Division be mindful of its obligation to respond to access to information requests within the 30-day legislated timeframe.

Dated at Regina, in the Province of Saskatchewan, this 17th day of January, 2023.

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