Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 038-2022

City of Lloydminster

September 15, 2022

Summary: The Applicant submitted an access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the City of Lloydminster (City) for body camera footage of a conversation between themself and a Community Peace Officer (CPO). The City refused the Applicant access to the body camera footage and cited section 14(1)(k) of LA FOIP as its reason. The Applicant appealed to the Commissioner. The Commissioner found that the City did not properly apply section 14(1)(k) of LA FOIP. Further, the Commissioner considered that it would be an absurd result to withhold the body camera footage from the Applicant since the Applicant was present when the recording took place, the Applicant supplied much of the information recorded, and the information in the body camera footage is clearly within the Applicant's knowledge. The Commissioner recommended that the City release the body camera footage to the Applicant.

I BACKGROUND

[1] On November 23, 2021, the City of Lloydminster (City) received the following access to information request:

> Audio and Video recording of the Servus Sport Centre for Nov 4, 2021 between 7.15 till 8.15ish pm.
> Camera located at the entrance of the sport centre,
> Reason and conversation of CPO officer on duty at Servus Sport Centre pertaining to myself.

[2] In a letter dated December 14, 2021, the City responded as follows:

> Your request has been partially granted. The video surveillance from the Servus Sports Centre has been reviewed and prepared for your viewing. The Body Camera footage will not be released as in the opinion of the Head of LA FOIP, it meets the requirement for an exemption pursuant to Section 14 of *The Local Authority Freedom of Information and Protection of Privacy Act*.

[3] On February 14, 2022, the Applicant requested a review by my office.

[4] On March 10, 2022, the City provided clarification to my office that it was relying on section 14(1)(k) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[5] On March 17, 2022, my office notified both the City and the Applicant that my office would be undertaking a review.

II RECORDS AT ISSUE

[6] The record at issue is the body camera footage of a community peace officer (CPO) speaking with a group of individuals. The Applicant was a part of the group of individuals. The footage is 17 minutes and 21 seconds long.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[7] The City qualifies as a "local authority" as defined by section 2(f)(i) of LA FOIP. Therefore, I find that I have jurisdiction to conduct this review.

2. Did the City properly apply section 14(1)(k) of LA FOIP?

[8] The City withheld the body camera footage in its entirety. It cited section 14(1)(k) of LA FOIP as its reason. Section 14(1)(k) of LA FOIP provides:

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

> ...
> (k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

[9] My office uses the following two-part test to determine if section 14(1)(k) of LA FOIP applies to a record:

1. Does the local authority's activity qualify as a "law enforcement matter"?
2. Does one of the following exist?
    a. The release of information would interfere with a law enforcement matter, or
    b. The release of information would disclose information with respect to a law enforcement matter.

[10] Below is an analysis to determine if the two-part test is met.

1. Does the local authority's activity qualify as a "law enforcement matter"?

[11] Chapter 4 of my office's *Guide to LA FOIP* provides that "law enforcement" includes the following:

> i) policing, including criminal intelligence operations, or
>
> ii) investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment.
>
> (*Guide to LA FOIP*, Chapter 4, "Exemptions from the Right of Access", updated April 29, 2021 [*Guide to LA FOIP*, Ch. 4]. P. 75)

[12] In the course of my office's review, the City indicated that the CPO was enforcing the City's *Emergency Management Bylaw* (Bylaw No. 06-2020) and Alberta's *Trespass to Premises Act*. The City explained that, at the time, a state of local emergency had been declared and was in effect, which required the face coverings in municipal locations offering services to the public. The Applicant had been asked to leave but did not. As such, the CPO was called to enforce the *Trespass to Premises Act*.

[13] I find that the City's activity qualifies as a "law enforcement matter". I will now consider the second part of the test.

> ***2. Does one of the following exist?***
>
> ***a. The release of information would interfere with a law enforcement matter, or***
>
> ***b. The release of information would disclose information with respect to a law enforcement matter.***

[14] In its submission, the City offered arguments about how both scenarios in this second part of the test for section 14(1)(k) of LA FOIP exist.

[15] First, the City indicated that the release of the information would interfere with a law enforcement matter. It said:

> Yes, the investigation being conducted was related to the individual refusing to leave the premises. Individuals provided information to the Peace Officer, in confidence.

[16] The term "interfere" means to hinder or hamper. Interference can occur on concluded, active, ongoing, or future law enforcement matters (*Guide to LA FOIP*, Ch. 4, p. 76). The City's submission does not explain how the release of the information would interfere with the law enforcement matter. Perhaps saying that individuals provided information to the CPO "in confidence" suggests that confidentiality would be compromised if the body camera footage was disclosed. Later in this Report, I will discuss how it was the Applicant who was the primary person speaking with the CPO in the body camera footage and the absurd result principle. Nevertheless, the City has not demonstrated that the release of body camera footage would interfere with a law enforcement matter.

[17] Then, in its submission, the City also indicated the release of the information would disclose information with respect to a law enforcement matter. It said:

> Yes, discussions relating to the investigation are deemed confidential and were meant for the Peace Officer and their duty to investigate. The release of this information could prejudice future discussions with Peace Officers, as individuals may refuse to speak to Peace Officers or may not be fulsome in their responses. This may put up barriers in

> the future for the public as the precedent will be set that the bodycam footage may become accessible to the public.

[18] It is necessary for the local authority (the City, in this case) to demonstrate that the information in the record is information with respect to a law enforcement matter to meet this particular part of the test. "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. 77).

[19] Based on what I have quoted at paragraph [17] of this Report, the City describes how there could be a chilling effect if individuals learned that body camera footage could be made available to the public. However, the City has not described how the release of the body camera footage would disclose information with respect to a law enforcement matter. As such, the City has not demonstrated that the release of the body camera footage would disclose information with respect to a law enforcement matter.

[20] I find, therefore, the City has not properly applied section 14(1)(k) of LA FOIP.

[21] I add that during this investigation, the Applicant provided their submission on the matter. The Applicant highlighted the fact that the body camera footage is of a conversation between them and the CPO:

> The record in question is an Audio & Video recording of conversation between myself and enforcement officer which was witnessed and heard by around 8-10 of the community members hence any secrecy that the city is trying to protect does not exist.

[22] Based on a review of the record at issue, I note the body camera footage is indeed audio and video of the conversation between a CPO and a group of eight individuals. The Applicant is a part of the group of eight individuals. The Applicant is the primary person speaking with the CPO.

[23] In the past, I have said it is an absurd result to withhold information from an applicant who supplied the information or who already has knowledge of the information that the

applicant supplied (Review Report 171-2019 at paragraph [52]; Review Report 059-2017 at paragraph [40]; Review Report 215-2020 at paragraph [32]).

[24] Also, I note that in Reconsideration Order MO-1868-R, the Office of the Ontario Information and Privacy Commissioner (ON IPC) explained the absurd result principle as follows:

> **Several subsequent orders have supported this position and include similar findings. The absurd result principle has been applied where, for example:**
>
> - **the requester sought access to his or her own witness statement [Orders M-444, M-451, M-613]**
> - **the requester was present when the information was provided to the institution [Orders P-1414]**
> - **the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO-1755]**
>
> In Order MO-1323, Adjudicator Laurel Cropley elaborated on the rationale for the application of the absurd result principle as follows:
>
> > As noted above, one of the primary purposes of the Act is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure (section 1(b)). Section 1(b) also establishes a competing purpose which is to protect the privacy of individuals with respect to personal information about themselves. Section 38(b) was introduced into the Act in recognition of these competing interests.
> >
> > In most cases, the "absurd result" has been applied in circumstances where the institution has claimed the application of the personal privacy exemption in section 38(b) (or section 49(b) of the provincial Act). The reasoning in Order M-444 has also been applied, however, in circumstances where other exemptions (for example, section 9(1) (d) of the Act and section 14(2)(a) of the provincial Act) have been claimed for records which contain the appellant's personal information (Orders PO-1708 and MO-1288).
> >
> > In my view, it is the "higher" right of an individual to obtain his or her own personal information that underlies the reasoning in Order M-444 which related to information actually supplied by the requester. **Subsequent orders have expanded on the circumstances in which an absurdity may be found, for example, in a case where a requester was present while a statement was given by another individual to the Police (Order P-1414) or where information on a record would clearly be known to the individual, such as where the requester**

> **already had a copy of the record (Order PO-1679) or where the requester was an intended recipient of the record (PO-1708).**
>
> To date, this office has not applied the absurd result principle to a situation where an individual has consented to disclose his or her witness statement which may contain personal information of individuals other than the witness and the requester. Having carefully considered the various interests at play in this type of situation, I have concluded that the principle should be extended to this type of situation.
>
> **Order M-444 and other subsequent similar orders have made it clear that if an individual makes a formal request for access under the Act to his or her statement made as a witness to a police investigation, that statement will be provided to the requester, regardless of the fact that it contains personal information of other individuals. These orders are saying, in effect, that denying a requester access to information that originated with that same person cannot be justified on the basis that some parts of the statement may relate to other individuals as well.** This office has applied the absurd result principle to that set of circumstances, and institutions routinely disclose statements of this nature in response to requests under both the provincial and municipal statutes. This practice reflects a clear balancing of interests in favour of disclosing information that might otherwise be caught by a presumption in section 14(3) (b), on the basis of what Adjudicator Cropley described as a "higher" right of access to one's own personal information.
>
> [Emphasis added]

[25] The body camera footage shows that the Applicant was present when the recording took place. Further, the Applicant is the primary person speaking with the CPO. Therefore, much of the recording is information supplied by the Applicant. The information in the recording is clearly within the Applicant's knowledge. As such, it would be an absurd result to withhold the body camera footage from the Applicant.

[26] Since the City has not demonstrated that section 14(1)(k) of LA FOIP applies to the record at issue, and since it would be an absurd result to withhold the recording from the Applicant, I recommend the City release the record to the Applicant.

IV FINDINGS

[27] I find that I have jurisdiction to conduct this review.

[28] I find the City has not properly applied section 14(1)(k) of LA FOIP.

V RECOMMENDATION

[29] I recommend that the City release the record to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 15th day of September, 2022.

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