



REVIEW REPORT 040-2023

Saskatoon Police Service

June 1, 2023

Summary: The Applicant sought access to a record regarding an occurrence from the Saskatoon Police Service (SPS). SPS denied access to the record, in full, pursuant to subsections 14(1)(c) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant asked the Commissioner to review SPS' decision. The Commissioner found that SPS properly applied subsection 14(1)(c) of LA FOIP and recommended that it continue to withhold the record, in full, pursuant to this subsection.

I BACKGROUND

[1] On January 20, 2023, the Saskatoon Police Service (SPS) received an access to information request from the Applicant as follows:

[redacted occurrence number]

Became aware of this from a court filing from petitioner [sic] yesterday. I have no knowledge of what this pertains and looking to obtain any and all information pertaining to this file number. This is very urgent and I am hoping I can obtain as quick as possible.

[2] In correspondence dated January 20, 2023, SPS advised the Applicant it was denying access to the records, in full, pursuant to subsections 14(1)(c) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] On February 10, 2023, the Applicant asked my office to review SPS' decision.

[4] On March 21, 2023, my office sent notification to the Applicant and SPS of my office's intention to undertake a review.

[5] SPS provided its submission on April 24, 2023, and the Applicant provided their submission on May 3, 2023.

II RECORDS AT ISSUE

[6] The record relates to an occurrence, as specified by the Applicant, that totals 14 pages. SPS has denied access, in full, pursuant to subsections 14(1)(c) and 28(1) of LA FOIP.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

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

2. Did SPS properly apply subsection 14(1)(c) of LA FOIP?

[14] As previously stated, SPS denied access to the record, in full, pursuant to subsection 14(1)(c) of LA FOIP, which provides as follows:

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.

[15] Subsection 14(1)(c) of LA FOIP is a discretionary class-based and harm-based exemption. Meaning it contains both a class and harm-based component. It 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. The following two-part test can be applied:

1. Does the local authority's activity qualify as a "lawful investigation"?
2. Does one of the following exist?
 - a) Could release of the following information interfere with a lawful investigation?
 - b) Could release 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], pp. 52-54).

1. Does the local authority's activity qualify as a "lawful investigation"?

[8] A lawful investigation is an investigation that is authorized or required and permitted by law. The local authority should identify the legislation under which the investigation is occurring. The investigation can be concluded, active and ongoing or be occurring in the future. It is not limited to investigations that are conducted by a local authority. In other words, it can include investigations conducted by other organizations (e.g., a police investigation) (*Guide to LA FOIP*, Ch. 4, p. 52).

[9] SPS submitted as follows:

The IPC's *Guide to LA FOIP* defines a lawful investigation as an investigation that is authorized by law, and provides that an investigation "can be concluded, active and ongoing or be occurring in the future". As a police service, many of the activities of the SPS qualify as a lawful investigation. It should be noted that the police's powers of investigation are broad and stem from various pieces of legislation both provincially and federally, and to narrow the issue down to a specific section of legislation would not be an accurate reflection of those powers. However, among the police powers of investigation, section 36(2) of *The Police Act, 1990*, provide the SPS with the authority to conduct lawful investigations and enforce respective laws.

[10] SPS added that it took the witness's statement in relation to a complaint against the Applicant, and that the individual may request the file to be reopened at any time, which may result in *Criminal Code* charges. At paragraph [20] of my office's [Review Report 161-2022, 162-2022](#), also concerning the SPS, I continued with the approach that subsection

14(1)(c) of LA FOIP can apply to both open and closed matters where *Criminal Code* charges may result. I continue that approach in this review, and so am satisfied that the first part of the test is met. I will consider the second part.

2. Does one of the following exist?

a) Could release of the following information interfere with a lawful investigation?

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

[11] SPS appears to be arguing that release of the record could “disclose information with respect to a lawful investigation”.

[12] Subsection 14(1)(c) 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. (*Guide to LA FOIP*, Ch. 4, p. 52).

[13] Therefore, it is only necessary for the local authority to demonstrate that the information in the record is information with respect to a lawful investigation to meet this part of the test (*Guide to LA FOIP*, Ch. 4, p. 53).

[14] To qualify, the records need to disclose information “with respect” to a lawful investigation. “With respect to” are words of the 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. 53).

[15] SPS submitted that subsection 14(1)(c) “provides that information may be withheld if disclosure would reveal information with respect to a lawful investigation”. SPS added the record contains documents including, among other documents, witness statements.

[16] Upon review of the record, it is apparent that it contains the types of information SPS claims. That is, the records appear to be connected to a lawful investigation or the occurrence. I am satisfied that the second part of the test has been met, and that SPS properly applied subsection 14(1)(c) of LA FOIP to the record in full.

[17] The Applicant in this matter states they learned of this occurrence through a court petition. They argue they were, “left in a position to defend [themselves] blind against allegations of police report...”.

[18] In a situation such as this, then, I would consider whether there is an “absurd result” meaning that information that can normally be withheld under an exemption (i.e., subsection 14(1)(c) of LA FOIP) should be disclosed to the person requesting access to it. I would base this on whether the record in question contains information that is within the Applicant’s knowledge because they provided it, because the Applicant was present when the information was provided to SPS, or because the information is clearly within the Applicant’s knowledge (see [Review Report 111-2022](#) at paragraph [72]). Based on the information before me, I have no proof that the Applicant provided the information to SPS, was present when it was provided to SPS, or would have knowledge of what was provided to SPS. As such, there is no absurd result to consider.

[19] Therefore, I recommend SPS continue to withhold the record, in full, pursuant to subsection 14(1)(c) of LA FOIP. As I found SPS can continue to rely on subsection 14(1)(c) of LA FOIP to withhold the record in full, I do not need to consider its reliance on subsection 28(1) of LA FOIP.

IV FINDING

[20] I find SPS properly applied subsection 14(1)(c) of LA FOIP.

V RECOMMENDATION

[21] I recommend SPS continue to withhold the record, in full, pursuant to subsection 14(1)(c) of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 1st day of June, 2023.

Ronald J. Kruzeniski, KC
Saskatchewan Information and Privacy
Commissioner