



## REVIEW REPORT 054-2022, 072-2022

### Saskatoon Police Service

July 22, 2022

**Summary:** The Applicant made an access to information request to the Saskatoon Police Service (SPS) under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). SPS extended the timeline for its response by an additional 30 days pursuant to section 12(1)(a)(ii) of LA FOIP. The Applicant filed a request for a review of the time extension with this office. Subsequently, the SPS issued a response pursuant to section 7 of LA FOIP denying access to portions of the record pursuant to section 14(1)(k) of LA FOIP. It also withheld some information as non-responsive. The Commissioner found that SPS' time extension did not comply with section 12 of LA FOIP, that section 14(1)(k) of LA FOIP did not apply and that some of the information was not responsive to the access to information request. The Commissioner recommended that SPS release the information it claimed was exempt and consider releasing the portions that are not responsive subject to any exemptions found to apply.

### I BACKGROUND

[1] On February 15, 2022, the Saskatoon Police Service (SPS) received an access to information request from the Applicant for the following:

Any Memorandums of Understanding between Saskatchewan Government Insurance and the Saskatoon Police Service regarding access to confidential information maintained in the SGI Auto Fund Registry.

[2] SPS responded to the access to information request on March 16, 2022, advising that the 30-day timeline for responding to the request was extended by 30 days pursuant to section 12(1)(a)(ii) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

- [3] On March 17, 2022, the Applicant asked my office to review SPS' decision to extend the timeline for responding to the access to information request. My office opened file 054-2022 to process the review.
- [4] On March 22, 2022, my office notified the Applicant and SPS of my office's intention to conduct a review and invited both parties to provide a submission on the appropriateness of SPS' time extension.
- [5] On April 14, 2022, the SPS provided my office with its submission for file 054-2022.
- [6] On April 14, 2022, SPS also provided a response to the access to information request pursuant to section 7 of LA FOIP. It withheld access to some of the information in the record on the basis that section 14(1)(k) of LA FOIP applied and other information on the basis that it was not responsive to the request.
- [7] On April 19, 2022, the Applicant asked my office to also review SPS' decision to withhold some of the information in the record. My office opened file 072-2022 to process the review.
- [8] On April 22, 2022, my office notified the Applicant and SPS of my intention to conduct a review in file 072-2022. The notification invited both parties to provide a submission on the application of section 14(1)(k) of LA FOIP and whether information was properly withheld as non-responsive to the access to information request.
- [9] On May 20, 2022, SPS provided my office with an index of records, submission, and copies of the record at issue for file 072-2022
- [10] On June 21, 2022, the Applicant provided my office with their submission for file 072-2022.
- [11] As files 054-2022 and 072-2022 involve the same parties, access to information request, and responsive record, this Report deals with the issues raised in both files.

## **II RECORD AT ISSUE**

[12] The record at issue is a 22-page Information Sharing Protocol (Protocol) between SGI and SPS.

## **III DISCUSSION OF THE ISSUES**

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

[13] SPS qualifies as a “local authority” as defined by section 2(f)(viii.1) of LA FOIP. Therefore, I have jurisdiction to review this matter.

### **2. Did SPS’ time extension comply with section 12 of LA FOIP?**

[14] Section 7(2) of LA FOIP provides that a local authority must respond to an access to information request within 30 days of receiving it unless the deadline for the response was extended pursuant to section 12 of LA FOIP. Section 7(2) of LA FOIP states, in part:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

[15] Section 12 of LA FOIP sets out the circumstances where a local authority can extend the initial 30-day deadline for a maximum of 30 days. If the deadline is extended for the maximum amount, the local authority has 60 days in total to respond.

[16] SPS’ notice of the extension stated it was relying on section 12(1)(a)(ii) of LA FOIP to support its claim to a 30-day extension. Sections 12(1)(a)(ii), (2) and (3) of LA FOIP provide:

12(1) The head of a local authority may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:

(a) where:

...

(ii) there is a large number of requests; and completing the work within the original period would unreasonably interfere with the operations of the local authority;

(2) A head who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within 30 days after the application is made.

(3) Within the period of extension, the head shall give written notice to the applicant in accordance with section 7.

[17] Section 12(2) of LA FOIP states that a notice of extension must be provided to an applicant within the first 30 days after the local authority receives an access to information request. SPS received the access to information request on February 15, 2022 and provided its notice of extension to the Applicant on March 16, 2022, which was 29 days later. Therefore, SPS complied with section 12(2) of LA FOIP. I note that as a best practice a local authority should take steps to notify an applicant of an extension as soon as it is able, rather than waiting until the last few days of the initial deadline to provide the notice.

[18] Section 12(3) of LA FOIP requires a local authority to respond within the period of the extension. SPS responded to the access to information request on April 14, 2022, which was 28 days following the date of the notice of the extension. Therefore, SPS complied with section 12(3) of LA FOIP.

[19] I now turn to consider whether the extension complied with section 12(1)(a)(ii) of LA FOIP. For section 12(1)(a)(ii) of LA FOIP to apply, the local authority must establish that both parts of the following test have been met:

1. Were there a high number of requests at the time?
2. Will meeting the original time limit unreasonably interfere with the operations of the local authority?

(*IPC Guide to LA FOIP*, Chapter 3, “Access to Records”, updated June 29, 2021 [*Guide to LA FOIP*, Ch. 3], pp. 78-80)

**1. Were there a high number of requests at the time?**

[20] LA FOIP does not define “large number of requests.” The factors to be considered in determining whether there was a large number of requests include the number of requests received and how that compares to the number received in previous years (*Guide to LA FOIP*, Ch. 3, p. 79). Previous reports of my office have found that increases in the number of requests of 50% or more qualify as a large number of requests (see my office’s [Report 177-2021](#), [Report 158-2017](#), and [Report 125-2015](#)).

[21] In its submission, SPS asserted the extension met both parts of the test. With respect to part 1 of the test, it stated:

The Applicant’s request was the 25th request received by the SPS in 2022. At the time the request was received, the SPS had 7 open FOIP requests for the 2022 year, and 11 FOIP requests that were still open from the 2021 year. The SPS has consistently received over 200 FOIP requests yearly since municipal police fell under LA FOIP in January of 2018. In 2021, the SPS received 290 FOIP requests, and has received 77 requests as of the date of this report. At the time of this report, there were 11 FOIP request files that were open that predated the Applicant’s request.

[22] SPS subsequently provided the following statistics regarding its access to information requests received and open files:

SPS access to information requests received as of:

- February 15, 2022 – 25
- February 15, 2021 – 39
- February 15, 2020 – 38

SPS open request files carried over from previous year:

- February 15, 2022 – 11 open 2021 files
- February 15, 2021 – 18 open 2020 files
- February 15, 2020 – 20 open 2019 files

[23] By my calculation and based on the information SPS provided, the number of access to information requests SPS received as of February 15, 2022, was approximately 33% lower than the number it had received by February 15, 2021. The number of open access to

information files that were carried over from the previous year also appear to be down by roughly the same amount.

[24] Given the decrease in the number of access to information requests received by the SPS, I find that the SPS has not met the first part of the test for the application of section 12(1)(a)(ii) of LA FOIP. In these circumstances, there is no need for me to consider whether the SPS has met the second part of the test. I find that SPS' time extension did not comply with section 12 of LA FOIP.

### 3. Did SPS properly apply section 14(1)(k) of LA FOIP?

[25] SPS applied section 14(1)(k) of LA FOIP to withhold information on pages 6 and 14 of the Protocol. 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;

[26] Section 14(1)(k) of LA FOIP permits refusal of access in situations where release of a record could interfere with a law enforcement matter or disclose information respecting a law enforcement matter. My office applies the following two-part test when considering the application of this exemption:

1. Is there a law enforcement matter involved?
2. Does one of the following exist?
  - (a) Could the release of information interfere with a law enforcement matter?
  - (b) Could the release of information disclose information with respect to a law enforcement matter?

(IPC *Guide to LA FOIP*, Chapter 4, "Exemptions from the Right of Access", updated April 29, 2021 [*Guide to LA FOIP*, Ch. 4] at pp. 74-77)

**1. Is there a law enforcement matter involved?**

[27] “Law enforcement” includes policing, which refers to the activities of police services, and includes criminal intelligence operations. This means activities carried out under the authority of a statute regarding the maintenance of public order, detection and prevention of crime or the enforcement of law. Law enforcement also includes 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*, Ch. 4, at pp. 75-76).

[28] “Matter” should be given its plain and ordinary meaning. It does not necessarily have to apply to some specific on-going investigation or proceeding. For example, law enforcement matter has been found to include opinions about potential criminal code charges ([Review Report 157-2019](#)); internal police records regarding police involvement in a labour dispute ([Review Report 115-2020, 116-2020, 117-2020](#)); and Call Reports, General Occurrence Reports and 911 audio records generated in the course of police activities under *The Police Act, 1990* ([Review Report 023-2019, 098-2019](#)).

[29] Section 36(2) of *The Police Act, 1990* provides members of the police service with the following powers and responsibilities:

**36(2)** Unless otherwise indicated in his or her appointment, a member has the power and the responsibility to:

(a) perform all duties that are assigned to constables or peace officers in relation to:

(i) the preservation of peace;

(ii) the prevention of crime and offences against the laws in force in the municipality; and

(iii) the apprehension of criminals, offenders and others who may lawfully be taken into custody;

[30] SPS asserted:

As a police service, much of the activities of the SPS qualify as a policing, investigative, and/or law enforcement matter.

...

The SPS does not only conduct investigations under the *Criminal Code* or the *Controlled Drugs and Substances Act*, but also conducts activities under various federal and provincial legislation and bylaws of the City of Saskatoon. Reasons for access to the SGI database can include traffic enforcement, identification of unknown individuals under investigation, etc. Therefore, the SPS submits that the first part of the test is met.

[31] The Applicant sought access to the Protocol, which is an agreement between SPS and SGI setting out the terms and conditions under which SGI gives SPS access to the SGI Auto Fund Registry. It governs and enables SPS to access and use information from SGI's database for purposes defined in the Protocol. The question, then, is if the information withheld from the Protocol involves a *law enforcement matter*.

[32] The information withheld from page 6 includes restrictions on the use of information contained in the SGI database by the SPS and defines certain exceptions. The information withheld from page 14, identifies one category of individuals who have authority under the Protocol to access information. I note information about other categories of individuals who have access rights to the SGI database has not been withheld.

[33] SPS' claim that the withheld information involves a law enforcement matter rests on the argument that the SPS *uses* the data in SGI's Auto Fund Registry for law enforcement purposes.

[34] I have not been provided with any information or argument to support a finding that the terms under which SPS accesses SGI's Auto Fund Registry, which is created and maintained by SGI, qualify as a law enforcement matter. SPS has not established a sufficient connection between the Protocol and SPS' policing, criminal intelligence, or investigative activities even when the term "matter" is given its broadest interpretation.

Therefore, I find that the information withheld from the Protocol at pages 6 and 14 does not qualify as a law enforcement matter pursuant to section 14(1)(k) of LA FOIP.

[35] As SPS has not met the first part of the test, I have no need to go further. I find SPS did not properly apply section 14(1)(k) of LA FOIP to the withheld information and recommend it release the portion of records where it applied this exemption.

**4. Is there information in the records that is not responsive to the access to information request?**

[36] SPS claimed that portions of pages 3 to 5, 11, and 12 of the Protocol were not responsive to the request and withheld that information. When a local authority receives an access to information request, it must determine what information is responsive to the request.

[37] Responsive means relevant. The term describes anything that is reasonably related to the request. It follows that any information or records that do not reasonably relate to an Applicant's request will be considered "not-responsive." The Applicant's access to information request itself sets out the boundaries of relevancy and circumscribes the records or information that will ultimately be identified as being responsive.

[38] A public body can sever information as non-responsive only if the Applicant has requested specific information, such as their personal information. The public body may treat portions of a record as non-responsive if they are clearly separate and distinct and not reasonably related to the access request.

[39] The purpose of LA FOIP is best served when a local authority adopts a liberal interpretation of a request. If a local authority has any doubts about its interpretation, it has a duty to assist an applicant by clarifying or reformulating the request (*Guide to LA FOIP*, Ch. 3, pp. 12 to 13).

[40] The Applicant's request was clear in that they sought access to any memoranda of understanding "regarding access to confidential information maintained in the SGI Auto

Fund Registry.” The portions of the Protocol that SPS has identified as responsive relate to SPS’ access to information in the Auto Fund Registry. The portions that have been found to be non-responsive deal with other arrangements for information sharing between SGI and SPS unrelated to the SGI Auto Fund Registry. In the “Purpose of Protocol” section of the record, it states that one of the purposes of the Protocol is to “replace all existing agreements with a single document governing the exchange of information.” SPS asserted:

These are two very different aspects to the information sharing relationship between the SPS and SGI. Not only are these separate aspects of the information sharing agreement, but it is separated out very clearly in the different sections of the MOU. The Applicant’s request was clear and unambiguous, and did not require further clarification, as the request was only for information regarding the SPS’ access to the Auto Fund Registry. As such, it was deemed that the other portions of the MOU were non-responsive to the request.

[41] I find, therefore, there are portions of the Protocol that are not responsive to the Applicant’s access to information request. However, consistent with my blog, “What About the Non-Responsive Records?” and previous reports of my office (see for example [Review Report 173-2020](#), [190-2020](#), [157-2021](#)), I recommend that SPS consider releasing the non-responsive portions of the Protocol, subject to any exemptions that are found to apply.

#### **IV FINDINGS**

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

[43] I find that SPS’ time extension did not comply with section 12 of LA FOIP.

[44] I find that SPS did not properly apply section 14(1)(k) of LA FOIP.

[45] I find that portions of the Protocol are not responsive to the Applicant’s request.

## V RECOMMENDATIONS

- [46] I recommend that SPS review and amend its policies or procedures for access to information requests to provide guidance on the circumstances where it has authority to extend the legislated timeline pursuant to section 12 of LA FOIP.
- [47] I recommend that SPS release the information withheld pursuant to section 14(1)(k) of LA FOIP.
- [48] I recommend that SPS consider releasing the portions of the Protocol that I have found to be non-responsive subject, to any exemptions found to apply.

Dated at Regina, in the Province of Saskatchewan, this 22nd day of July, 2022.

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