



## **REVIEW REPORT 061-2021**

### **Prince Albert Police Service**

**March 17, 2022**

**Summary:** The Applicant made an access to information request to the Prince Albert Police Service (PAPS) seeking information about a church. PAPS responded to the request disclosing some information and withholding other information pursuant to sections 28(1) and 13(1)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). PAPS also withheld information claiming that it was non-responsive to the request. The Applicant filed a request for a review of PAPS' decision. In this review, the Commissioner found that PAPS properly applied sections 28(1) and 13(1)(a) of LA FOIP to some information, and in all cases properly claimed non-responsiveness. The Commissioner recommended that PAPS release some of the information withheld pursuant to sections 28(1) and 13(1)(a) of LA FOIP and withhold the remaining information.

### **I BACKGROUND**

[1] On November 23, 2020, the Applicant made an access to information request to the Prince Albert Police Service (PAPS) under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The request stated:

Provide copies of all documents, including e-mails, texts or instant messages, slack messages, WhatsApp messages, memos, briefing notes, etc., regarding concerns related to the [named church] in Prince Albert, [link to news article about COVID 19 restrictions] since March 1, 2020

[2] PAPS responded to the request on December 21, 2020, by providing the Applicant with a fee estimate and requesting a deposit.

- [3] The Applicant paid the deposit. PAPS wrote to the Applicant on February 9, 2021, advising that it had completed processing the request. PAPS asked the Applicant to pay the balance owing under the fee estimate before it would release the records.
- [4] The Applicant paid the balance owing and on February 11, 2021, PAPS issued its response pursuant to section 7 of LA FOIP. The section 7 letter stated that portions of the records were withheld pursuant to section 28(1) of LA FOIP and some information was not responsive to the request.
- [5] On March 22, 2021, the Applicant requested that my office review PAPS' decision to withhold information.
- [6] On March 24, 2021, my office notified the Applicant and PAPS of my intention to conduct a review. The notification invited both parties to provide submissions on the possible application of section 28(1) of LA FOIP and PAPS' claim that some information was not responsive to the request.
- [7] On April 19, 2021, PAPS provided my office with a submission, and redacted and unredacted copies of the records at issue. The Applicant did not file a submission.
- [8] The redacted records and PAPS' submission included a new claim that some information was withheld pursuant to section 13(1)(a) of LA FOIP. The Applicant subsequently advised my office that they were also disputing PAPS' claim to this exemption.

## **II RECORDS AT ISSUE**

- [9] The responsive records consist of 61 memos and associated search logs, two audio recordings, one briefing note, emails (372 pages), four Dispatch Tickets and a General Occurrence Report. The memos and associated search logs, two audio recordings and one Dispatch Ticket were released in full.

[10] The table below describes the records remaining at issue and PAPS' decision:

<b>Record Number</b>	<b>Page Number</b>	<b>Description</b>	<b>Date</b>	<b>PAPS' Decision</b>	<b>LA FOIP Exemption(s) Applied</b>
1	1	Briefing Note	March 25, 2020	Severed	Non-responsive, 28(1),
2	1-372	Emails	Various	Severed	Non-responsive, 28(1),
3	1-13	DP Ticket 16502	May 14, 2020	Severed	28(1), 13(1)(a)
4	1-2	DP Ticket 16631	May 15, 2020	Severed	28(1)
5	1-11	DP Ticket 27148	July 21, 2020	Severed	28(1), 13(1)(a)
6	1-27	General Occurrence Report	Feb 16, 2021	Severed	Non-responsive, 28(1)

### **III DISCUSSION OF THE ISSUES**

#### **1. Do I have jurisdiction to conduct this review?**

[11] PAPS 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 PAPS properly withhold non-responsive information?**

[12] PAPS severed portions of Records 1, 2 and 6 claiming that they were not responsive to the Applicant's request.

[13] When a local authority receives an access to information request, it must determine what information is responsive to the access request. The term "responsive" describes anything that is reasonably related to the request. The wording of the request sets out the boundaries of relevancy and defines the records or information that will be identified as responsive (*Guide to LA FOIP*, Chapter 3: "Access to Records", Updated: June 29, 2021, pp. 12-13, (*Guide to LA FOIP*, Ch. 3)).

[14] The purpose of LA FOIP is best served when a local authority adopts a liberal interpretation of a request. If it is just as easy to release the information as it is to claim not responsive, the information should be released (i.e., releasing the information will not involve time consuming consultations nor considerable time weighing discretionary exemptions) (*Guide to LA FOIP*, Ch. 3, p. 13).

[15] The information withheld from Records 1, 2 and 6 as non-responsive is about calls for police service and other policing matters that do not involve the named church and COVID-19 restrictions. I find that the information withheld from these records is not responsive to the request. I also note that in some cases, claims to non-responsiveness resulted in severances to portions of records and not the entire record. I am satisfied that PAPS adopted a liberal interpretation of the request in making its severances. For these reasons, I find that in all cases, PAPS properly withheld information that was not responsive to the request. However, PAPS should consider releasing this information, subject to exemptions.

### **3. Did PAPS properly apply section 28(1) of LA FOIP?**

[16] PAPS denied access to portions of Records 1 to 6 pursuant to section 28(1) of LA FOIP.

[17] Section 28(1) of LA FOIP is a mandatory exemption that protects the privacy of individuals whose personal information may be contained in records that are responsive to a request made by someone else. This information is referred to as third party personal information. Section 28(1) requires a local authority to have the consent of the individual whose personal information is in the record prior to disclosing it (*Guide to LA FOIP, Chapter 4* (updated April 29, 2021) at page 240 (*Guide to LA FOIP*, Ch. 4)).

[18] Section 28(1) of LA FOIP provides:

**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.

[19] In order for section 28(1) of LA FOIP to apply, the information must be “personal information.” “Personal information” is defined in section 23(1) of LA FOIP. While PAPS claimed that the information at issue was personal information, its submission did not explain how the severed information met the definition of personal information in section 23(1) of LA FOIP.

[20] Section 23(1) of LA FOIP defines “personal information” and provides some examples of the types of information that can be considered personal information. The following sections are relevant in this review:

**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:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(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;

(c) information that relates to health care that has been received by the individual or to the health history of the individual;

...

(e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;

(f) the personal opinions or views of the individual except where they are about another individual;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

[21] The list of examples of personal information in section 23(1) of LA FOIP is not exhaustive. To determine if the information is personal information, it must, 1) be about an identifiable individual, and 2) be personal in nature.

***Record 1***

[22] Record 1 is described as a briefing note. It includes the name of an individual who filed a complaint with PAPS, and another individual. I find that the name of the complainant appears in a personal context and releasing their name would reveal other personal information about them, such as their personal opinions or views. Therefore, the complainant's name and their opinions and views qualify as their personal information under sections 23(1)(f) and (k) of LA FOIP.

[23] However, the name of the other individual does not qualify as personal information because the name appears in a professional, business or non-personal context. It describes this individual as the person responsible for the operation of the named church and its soup kitchen. This is the kind of information that would normally appear on a business card, business letter and business email correspondence, which does not relate to individuals in their personal capacity. It relates to individuals in their professional or business capacity, and therefore, is not personal in nature.

[24] In my office's Review Report [012-2020](#), [038-2020](#), I found that a town administrator's name, email address and signature block did not qualify as personal information pursuant to section 24(1) of *The Freedom of Information and Protection of Privacy Act* (equivalent to section 23(1) of LA FOIP) because this type of information is generally not personal in nature and, therefore, would not be considered personal information.

[25] Following the same approach here, I find that the name of the individual responsible for operating the named church is not personal information. Therefore, I find that PAPS

properly withheld the name of the complainant pursuant to section 28(1) of LA FOIP, but not the name of the individual responsible for the operation of the church.

***Record 2***

[26] Record 2 is a series of emails and attachments totaling 372 pages. PAPS claimed that section 28(1) of LA FOIP applied to all or portions of the following pages: 1-11, 18-31, 43-44, 48-51, 53-56, 58, 65-68, 70-72, 76-84, 106-107, 111-115, 118, and 124.

[27] The emails found on pages 1-58 are emails from members of the public sent in their personal capacity. The information withheld from these emails is the individuals' names and email addresses. This information appears with other personal information about them, such as their opinions and views. If the email addresses are personal and not professional or business email addresses, they should be withheld as the personal information of these individuals. I find that the remaining information severed from pages 1-58 qualifies as personal information pursuant to section 23(1)(k) of LA FOIP. As the individuals did not consent to their personal information being released, I find that PAPS properly withheld it pursuant to section 28(1) of LA FOIP.

[28] Record 2 also includes human resources related information involving an employee of PAPS. This information appears on pages 65-68, 70-72, 76-84, 106-107, and 111-115. The information includes the employee's name, employment history, opinions or views, health care and health history information. This is the kind of information that would appear in an individual's personnel file. It qualifies as the personal information of the employee pursuant to sections 23(1)(b), (c), (f) and (k) of LA FOIP. As this employee has not consented to the release of their personal information, I find that PAPS properly withheld it pursuant to section 28(1) of LA FOIP.

[29] PAPS withheld the name of an individual who has a role in the operation of the named church from page 118 of Record 2. PAPS also withheld the telephone number for a public servant on page 124 of Record 2. The information severed from these emails is not personal information. This is the type of information that one normally sees on a business card,

business letter and business email correspondence, which does not relate to individuals in their personal capacity. It relates to individuals in their professional or business capacity and, therefore, it is not personal in nature.

- [30] Consistent with findings made above about business or professional information, I find that the information severed from Record 2, pages 118 and 124 does not qualify as personal information pursuant to section 23(1) of LA FOIP and is not exempt pursuant to section 28(1) of LA FOIP. I recommend below that PAPS release this information.

***Records 3, 4, and 5***

- [31] These records are Dispatch Tickets. The information severed includes the name and contact details for complainants, and their opinions and views, which qualify as their personal information pursuant to sections 23(1)(e), (f) and (k) of LA FOIP. PAPS also severed names, contact details, sex, ancestry, opinions and views of the subjects of the complaint, and involved individuals, which qualify as their personal information pursuant to sections 23(1)(a), (e), (f) and (k) of LA FOIP. As the complainants and other individuals have not consented to the release of their personal information, the severed information is exempt pursuant to section 28(1) of LA FOIP and should be withheld.

***Record 6***

- [32] The name of one individual which appears on Record 6, page 8 was withheld pursuant to section 28(1) of LA FOIP. It is the name and title for a contact person for the named church. Like the professional information discussed above, this information is not personal in nature and does not qualify as personal information pursuant to section 23(1) of LA FOIP. Therefore, I find that this information is not exempt pursuant to section 28(1) of LA FOIP, and it should be released to the Applicant.



**4. Did PAPS properly apply section 13(1)(a) of LA FOIP to Records 3 and 5?**

[33] I will now address the application of section 13(1)(a) of LA FOIP to Records 3 and 5. Section 13 of LA FOIP is a mandatory exemption which means that the head of the local authority is obligated to apply the exemption in defined circumstances. It permits refusal of access to information where the information was obtained in confidence, implicitly or explicitly from the Government of Canada unless there is consent to release or the information was made public. It includes the Government of Canada's agencies, Crown corporations and other institutions. Section 13 of LA FOIP provides as follows:

**13(1)** A head shall refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from:

(a) the Government of Canada or its agencies, Crown corporations or other institutions;

...

unless the government or institution from which the information was obtained consents to the disclosure or makes the information public.

[34] To determine if section 13(1)(a) of LA FOIP applies, my office uses the following three-part test:

1. Was the information obtained from the Government of Canada or its agencies, Crown corporations or other institutions?
2. Was the information obtained implicitly or explicitly in confidence?
3. Is there consent to disclose the information or has the information been made public?

*(Guide to LA FOIP, Ch. 4, pp. 18-22)*

[35] PAPS' submission noted that it applied section 13(1)(a) of LA FOIP to "CPIC information" about subject persons in Records 3 and 5. Much of this information is sensitive personal information about individuals, including information that would identify them as having some involvement with law enforcement services.

[36] CPIC is the term used to describe a database operated by the Canadian Police Information (CPI) Centre. It is used by various law enforcement authorities within Canada as a repository for law enforcement and public safety operational information. The Royal Canadian Mounted Police (RCMP), which reports to the Canadian Parliament, operates the CPIC database. CPIC contains a vast array of public safety information, including personal information related to criminal activity, missing persons, and warrants for arrest. ([Audit of Selected RCMP Operational Databases](#), 2011, Office of the Privacy Commissioner of Canada).

***1. Was the information obtained from the Government of Canada or its agencies, Crown corporations or other institutions?***

[37] The information at issue in Records 3 and 5 was retrieved by PAPS from the CPIC database which is held by the RCMP. The RCMP is listed in Schedule 1 of the federal *Access to Information Act*, so it would constitute a federal government institution. The printouts from the CPIC database found in Records 3 and 5 indicate where the information originated from. With one exception, the information retrieved by PAPS had been uploaded to the CPIC database by law enforcement services other than PAPS.

[38] Some of the information retrieved from CPIC in Record 3 originated with and was uploaded to CPIC by PAPS. This is information that would reside within PAPS' own record holdings and was provided by PAPS to the RCMP. I find that the information at issue in Record 3 that originated with PAPS was not obtained from the RCMP and part 1 of the test for the application of section 13(1)(a) of LA FOIP has not been met. As all three parts of the test for the application of section 13(1)(a) must be met, there is no need for me to consider whether the information that originated with PAPS meets parts 2 and 3 of the test. As no other exemptions have been claimed for that information, I recommend that this information be released by PAPS subject to the application of any exemptions.

[39] I find that the remaining information in Record 3 and all the information at issue in Record 5 was obtained by PAPS from the RCMP and, therefore, part 1 of the test for section 13(1)(a) of LA FOIP has been met for this information.

**2. Was the information obtained implicitly or explicitly in confidence?**

[40] In response to questions asked by my office, PAPS stated that the information severed from Records 3 and 5 pursuant to section 13(1)(a) of LA FOIP was provided in confidence by the CPI Centre via the CPIC database. In support of its position, PAPS provided my office with the following excerpt from its Memorandum of Understanding with the CPI Centre governing its access to the CPIC database:

5.1 The Agency and the CPI Centre acknowledge the necessity to respect the privacy of individuals, to protect the data available through CPI Centre systems, and the obligation to comply with all applicable provincial or federal access to information and privacy laws.

5.2 The security and integrity of CPI Centre systems and policy compliance are shared responsibilities, and the CPI Centre will take the steps necessary to protect the integrity of information held in CPI Centre systems, up to and including suspension of services.

...

6.5 Where disclosure of information is required by law (other than in accordance with the requirements to Crown Counsel) prior to the disclosure, the Agency will promptly notify the originating agency (contributor) in writing of the information to be disclosed.

6.6 If the Agency receives a request for access to information accessed through CPI Centre systems, the Agency will consult with the originating record owner prior to disclosing the information, whether or not the request was made in accordance with access to information, privacy laws, or any other informal or formal means.

[41] “In confidence” usually describes a situation of mutual trust in which private matters are relayed or reported. Information obtained in confidence means that the provider of the information has stipulated how the information can be disseminated. In order for confidence to be found, there must be an implicit or explicit agreement or understanding of confidentiality on the part of both the local authority and the party that provided the information (*Guide to LA FOIP*, Ch. 4, p. 19).

[42] The expectation of confidentiality must be reasonable and must have an objective basis. Whether the information is confidential will depend upon its content, its purposes, and the circumstances in which it was compiled or communicated (*Corporate Express Canada*,

*Inc. v. The President and Vice Chancellor of Memorial University of Newfoundland, Gary Kachanoski, (2014)* (*Guide to LA FOIP*, Ch. 4, p. 19).

[43] “Implicitly” means that the confidentiality is understood even though there is no actual statement of confidentiality, agreement, or other physical evidence of the understanding that the information will be kept confidential. Factors to consider when determining whether information was obtained in confidence implicitly include (not exhaustive):

- What is the nature of the information? Would a reasonable person regard it as confidential? Would it ordinarily be kept confidential by the local authority or the party that provided the information?
- Was the information treated consistently in a manner that indicated a concern for its protection by the local authority and the party that provided the information from the point it was obtained until the present time?
- Is the information available from sources to which the public has access?<sup>40</sup> Does the local authority have any internal policies or procedures that speak to how records such as the one in question are to be handled confidentially?
- Was there a mutual understanding that the information would be held in confidence? Mutual understanding means that the local authority and the party that provided the information both had the same understanding regarding the confidentiality of the information at the time it was provided. If one party intends the information to be kept confidential but the other does not, the information is not considered to have been obtained in confidence. However, mutual understanding alone is not sufficient. Additional factors must exist.

(*Guide to LA FOIP*, Ch. 4, p. 19-20)

[44] “Explicitly” means that the request for confidentiality has been clearly expressed, distinctly stated or made definite. There may be documentary evidence that shows that the information was obtained with the understanding that it would be kept confidential. Factors to consider when determining if information was obtained in confidence explicitly include (not exhaustive):

- the existence of an express condition of confidentiality between the local authority and the party that provided the information;

- the fact that the local authority requested the information be provided in a sealed envelope and/or outlined its confidentiality intentions prior to the information being provided.

*(Guide to LA FOIP, Ch. 4, p. 19-20)*

[45] The Memorandum of Understanding does include provisions requiring CPIC users to protect the privacy of individuals and protect the integrity of the data it holds. However, it also recognizes that there may be circumstances where the user is required by law to release information and to respond to requests for access to the information under applicable access to information laws. Given the terms of the Memorandum of Understanding between the CPI Centre and PAPS and that the information at issue here is sensitive information about individuals other than the requester, I find that the information severed from and remaining at issue in Records 3 and 5 was obtained implicitly in confidence. Therefore, the second part of the test for section 13(1)(a) of LA FOIP has been met.

[46] As there is no consent to release the CPIC information and it has not been made public, I find that the third part of the test has also been met. Therefore, I find that PAPS properly withheld the remaining information severed from Records 3 and 5 pursuant to section 13(1)(a) of LA FOIP.

#### **IV FINDINGS**

[47] I find that the information severed as non-responsive from Records 1, 2, and 6 is not responsive to the Applicant's request.

[48] I find that PAPS properly withheld some personal information pursuant to section 28(1) of LA FOIP in Records 1 to 5.

[49] I find that PAPS did not properly apply section 28(1) of LA FOIP to information about the operator of the named church in Record 1; information about the operator of the named church on Record 2, page 118; the telephone number for the public servant on Record 2, page 124; and the name, title and contact details severed on Record 6, page 8.

[50] I find that PAPS did not properly apply section 13(1)(a) of FOIP to information in Record 3 that it uploaded to CPIC, and that information should be released subject to exemptions.

[51] I find that PAPS did properly apply section 13(1)(a) of LA FOIP to the remaining portions of Records 3 and 5.

## **V RECOMMENDATIONS**

[52] I recommend that PAPS consider releasing any information it has withheld as non-responsive, subject to exemptions.

[53] I recommend that PAPS release the following information: information about the operator of the named church in Record 1; information about the operator of the named church on Record 2, page 118; the telephone number for the public servant on Record 2, page 124; and the name, title and contact details severed on Record 6, page 8.

[54] I recommend that PAPS continue to withhold the remaining information severed pursuant to section 28(1) of LA FOIP.

[55] I recommend that PAPS release, subject to exemptions, information in Record 3 that it uploaded to CPIC.

[56] I recommend that PAPS continue to withhold the remaining information severed pursuant to section 13(1)(a) of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 17th day of March, 2022.

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