REVIEW REPORT 063-2021

Regina Police Service

August 9, 2022

Summary: The Applicant sought information from the Regina Police Service (RPS). RPS responded that, pursuant to section 7(4) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), it could neither confirm nor deny that records exist or ever existed. The Commissioner found RPS could not rely on section 7(4) of LA FOIP in this matter and recommended that RPS issue a new section 7 response to the Applicant.

I   BACKGROUND

[1]   On March 4, 2021, the Regina Police Service (RPS) received an access to information request from the Applicant as follows:

> I am requesting to know if on Feb 6 [name redacted] made a call to the police in regards to me. [They] claims on a [sic] affidavit that I did not leave [their] residence until [they] called police and to my knowledge no call was made. I need this info before [date redacted] as there is a court date for a custody dispute over my [information redacted].

[2]   In correspondence dated March 29, 2021, RPS responded to the Applicant stating that, pursuant to section 7(4) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), it was "unable to confirm nor deny the existence of any records…"

[3]   On March 29, 2021, the Applicant asked my office to undertake a review of RPS' decision.

[4]   On April 6, 2021, my office notified the Applicant and RPS of my office's intention to undertake a review.

[5]   On May 4, 2021, RPS provided its submission. The Applicant had provided their submission on April 6, 2021.

II   RECORDS AT ISSUE

[6]   Based on its response to the Applicant dated March 29, 2021, RPS is neither confirming nor denying the existence of a record pursuant to section 7(4) of LA FOIP.

III   DISCUSSION OF THE ISSUES

1.   Do I have jurisdiction?

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

[8]   I note that RPS has invoked section 7(4) of LA FOIP. Section 48 of LA FOIP adopts section 46 of *The Freedom of Information and Protection of Privacy Act* (FOIP) with any necessary modifications. Section 46(4)(b) of FOIP requires that I take reasonable precautions to avoid not disclosing any information that will confirm if a record exists if a local authority has invoked section 7(4) of LA FOIP. Throughout this review, then, I will take care and avoid confirming or denying the existence of any responsive records. I will lay out the reasons for my findings in very general terms only. I caution that when a public body invokes subsection 7(4) of LA FOIP it makes our analysis much more difficult, the writing of the report more awkward and sometimes it makes the exercise appear to be stupid or silly.

2.   Can RPS rely on section 7(4) of LA FOIP?

[9]   Section 7(2)(f) of LA FOIP provides that in certain cases, a local authority may refuse to confirm or deny the existence of a record. If a local authority intends to invoke this

provision, it must do so in compliance with section 7(4) of LA FOIP (*Guide to LA* FOIP, Chapter 3, "Access to Records", updated June 29, 2021 [*Guide to LA FOIP*, Ch. 3], p. 37).

[10]   Section 7(4) of LA FOIP provides as follows:

> **7**(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.

[11]   RPS invoked section 7(4) of LA FOIP. Section 7(4) of LA FOIP provides that where a local authority intends to respond to an applicant citing section 7(2)(f) of LA FOIP, it can only do so for records that would be exempt from disclosure pursuant to sections 14, 20 or 21 or section 28(1) of LA FOIP (*Guide to LA FOIP*, Ch. 3, p. 39).

[12]   By invoking section 7(4) of LA FOIP, a local authority is denying an applicant the right to know whether a record exists. This section provides local authorities with a significant discretionary power that should be exercised only in rare cases. It is the Commissioner's view that this provision is meant to protect highly sensitive records where confirming or denying the mere existence of a record would impose significant risk. For example, the risk of harm to witnesses because of revealing a law enforcement investigation is underway. Although section 14 of LA FOIP could protect records from being disclosed that fall into the category of law enforcement and investigations, this provision enables the local authority to address risks that could occur just by revealing records exist. It is not meant to protect a local authority from possible embarrassment or negative public scrutiny (*Guide to LA FOIP,* Ch. 3, p. 39).

[13]   By invoking section 7(4) of LA FOIP, a local authority must be able to:

1. demonstrate that records, if they existed, would qualify for the particular exemption provided for at section 7(4); and

2. explain how disclosing the existence of records, if they existed, could reasonably compromise what it is protecting.

[14] In this matter, the Applicant wanted to know if someone (Individual A) had made a call to the RPS about them. In other words, they were searching for information about themselves that exists in RPS' records. Such information would contain their personal information as defined by section 23(1)(k) of LA FOIP, which provides as follows:

> **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:
>
> …
> (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.

[15] A record, if it did exist, would contain the Applicant's personal information pursuant to section 28(1) of LA FOIP. RPS cannot rely on section 28(1) of LA FOIP to withhold records, if they exist, that contain the Applicant's personal information.

[16] Based on RPS' submission, nothing before me demonstrates that section 7(4) of LA FOIP applies. I find, therefore, RPS cannot rely on section 7(4) of LA FOIP.

[17] I recommend RPS issue a new section 7 response to the Applicant.

IV   FINDING

[18] I find RPS cannot rely on section 7(4) of LA FOIP.

V   RECOMMENDATION

[19] I recommend RPS issue a new section 7 response to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 9th day of August, 2022.

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