



REVIEW REPORT 071-2024

Rural Municipality of Reford No. 379

September 26, 2024

Summary:

The Applicant made an access to information request to the Rural Municipality of Reford No. 379 (RM) requesting access to records and they requested a fee waiver. The RM released some records in full and others in part pursuant to subsections 13(1)(a), 15(1)(b)(ii), 18(1)(c), (d) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant requested a review by the Commissioner of the RM's decision to withhold information and its search for records. During the review, the RM withdrew its claim to subsection 13(1)(a) of LA FOIP. Also, during the review, the Applicant narrowed the scope of the review. As a result, the RM's claim to subsection 15(1)(b)(ii) of LA FOIP was no longer at issue. The A/Commissioner found that the RM did not conduct a reasonable search for records. He also found that the RM did not demonstrate, pursuant to section 51 of LA FOIP, that subsections 18(1)(c) and (d) of LA FOIP apply. The A/Commissioner also found that the RM properly applied subsection 28(1) of LA FOIP to some information but not all. The A/Commissioner recommended that the RM, within 30 days of issuance of this Report, conduct another search for responsive records, issue a new decision that complies with section 7 of LA FOIP and review its policies and procedures for processing access to information requests to ensure compliance with LA FOIP. He also recommended that the RM release some and continue to withhold other information.

I BACKGROUND

[1] The Applicant made an access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the Rural Municipality of Reford No. 379 (RM). The RM received the request on November 29, 2023.

[2] The Applicant sought access to the following information:

Minutes of the Meetings accompanied by all annexed correspondence and financials, from Nov. 2022 to Nov. 2023.

[3] The Applicant also requested a waiver of the processing fees and explained that they were seeking access to this information to “equip [them] to efficiently do [their] job.”

[4] The RM responded to the request by letter dated December 15, 2023, stating that it was denying the request for a fee waiver.

[5] On December 31, 2023, the Applicant paid the \$20.00 fee for processing their request to the RM.

[6] On February 29, 2024, the RM sent its section 7 decision to the Applicant granting access to some pages in full and others in part. The section 7 decision did not set out the exemptions that were applied to withhold information.

[7] On March 7, 2024, the Applicant filed a request for a review with my office stating that they had been denied access to all or part of the responsive records. In addition, they stated that additional records existed and subsequently provided my office with a list of records they claimed were missing.

[8] On April 5, 2024, my office wrote to the RM asking it to provide my office with further information about its search for responsive records. My office also asked the RM if it would reconsider its decision to withhold portions of the records.

[9] On April 11, 2024, the RM wrote to my office stating that, “there were 414 pages included in this release of information and response.” Regarding the exemptions applied to withhold information, it stated:

The majority of the redactions were done on the payables being either all the employee’s individual tax deductions as the head does not believe it is in the best interest to disclose how much each individual has had deducted in income tax , cpp, ei, or mepp. Section 13.1 states that the government of Canada information shall be kept

confidential. The total cheque amount payable to each individual employee was released. There were signatures of rate payers redacted as that is identifiable information where the municipality has a duty to protect. The other redactions were the individual prices of materials or services sold to the municipality. This is protected third party information under section 18.1 (a)(i) and (ii) in which the result of disclosure could be loss of finances and prejudice the suppliers of the RM in competitive pricing. Again the final amount was disclosed.

- [10] The RM also provided my office with a table entitled “Form F Redaction Explanation” which set out the redaction number, the section of LA FOIP relied on to support the redaction and a brief description of the withheld information. In this table, the RM stated that it was claiming subsections 15(1)(b)(ii), 18(1)(c)(ii) and 28(1) of LA FOIP. The RM did not address my office’s request for information about its search for records.
- [11] On April 15, 2024, my office wrote to the RM again to ask for information about its search for records. In addition, my office pointed out a discrepancy between the list of exemptions claimed in its email dated April 11, 2024, and in the “Form F” table, and my office sought clarification of the exemptions that were applied to the records.
- [12] On April 16, 2024, the RM responded to my office stating that it was relying on subsections 13(1)(a), 18(1)(c), (d), and 23(1)(b), (i), (d) and (e) of LA FOIP. However, the RM did not provide any further information about its search for records.
- [13] On May 2, 2024, my office sent a notice of review to the Applicant and the RM. The notice stated that my office would be reviewing the RM’s decision to withhold information pursuant to subsections 13(1)(a), 15(1)(b)(ii), 18(1)(c)(i), 18(1)(c)(ii), 18(1)(c)(iii), 18(1)(d) and 28(1) of LA FOIP and its search for responsive records.
- [14] My office received correspondence from the RM on May 9, 2024, and various supporting documents in response to the notice of review. The Applicant did not make a submission.
- [15] After completing another search for responsive records, on September 13, 2024, the RM issued an additional section 7 decision to the Applicant releasing ten pages in full and 22 pages in part.

II RECORDS AT ISSUE

[16] The RM provided my office with 272 pages of records claiming that they were responsive to the request. Of those, it denied access to 103 pages in part and released the remaining pages in full. The RM grouped the records in six parts as follows:

- Part One – 48 pages in total – 17 pages were withheld in part.
- Part Two – 88 pages in total – 21 pages were withheld in part.
- Part Three – 49 pages in total – 19 pages were withheld in part.
- Part Four – 53 pages in total – 22 pages were withheld in part.
- Part Five – 1 page in total – withheld in part.
- Part Six – 33 pages in total – 23 pages were withheld in part.

[17] On September 9, 2024, the RM wrote to my office further clarifying that it was no longer claiming the application of subsection 13(1)(a) of LA FOIP. Therefore, this exemption is not at issue in this review.

[18] During the review, the Applicant informed my office that they were not interested in access to the information withheld from the following documents:

- Statements of property tax arrears,
- Contract attached to the Minutes of the December 8, 2022 meeting,
- Employee Cheque History Reports,
- Agenda dated April 13, 2023,
- Foreman Report dated May 11, 2023, and
- Minutes of meetings dated September 1 and 14, 2023, October 12, 2023, and November 2, 2023.

[19] Therefore, this information falls outside the scope of this review, and I will not be addressing it in this Report. As a result, I need not consider if the RM properly applied subsection 15(1)(b)(ii) of LA FOIP in this Report.

[20] Appendix A to this Report sets out a description of the records and the exemptions claimed in Parts One to Five. Appendix B sets out a description of the records and the exemptions claimed in Part Six. These appendices also set out the details of the withheld information that falls outside the scope of the review.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[21] The RM qualifies a “local authority” as defined in subsection 2(1)(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

[22] Subsection 2(1)(b.1) of LA FOIP defines “employee.” Subsection 2(1)(k) of LA FOIP defines “third party.” These provisions state:

2(1) In this Act:

...

(b.1) “employee” means an individual employed by a local authority and includes an individual retained under a contract to perform services for the local authority;

...

(k) “third party” means a person, including an unincorporated entity, other than an applicant or a local authority.

[23] Some of the withheld information at issue in this review includes information that relates to individuals who are employed by the RM, including under a contract to perform services for the RM. These individuals are “employees” as that term is defined in subsection 2(1)(b.1) of LA FOIP. They do not qualify as third parties.

[24] Some of the withheld information at issue in this review includes information relating to multiple individuals and businesses that provided goods to the RM. These individuals and businesses qualify as third parties as defined in subsection 2(1)(k) of LA FOIP.

[25] As the RM is a local authority and third parties are involved, I have jurisdiction to conduct this review.

2. Did the RM conduct a reasonable search for responsive records?

[26] Section 5 of LA FOIP provides an applicant with a right of access to records in the possession or control of a local authority. It states:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a local authority.

[27] Subsection 5.1(1) of LA FOIP states:

5.1(1) Subject to this Act and the regulations, a local authority shall respond to a written request for access openly, accurately and completely.

[28] My office's *Guide to LA FOIP*, Chapter 3, "Access to Records", updated May 5, 2023 [*Guide to LA FOIP*, Ch. 3], at page 12, states that subsection 5.1(1) of LA FOIP requires a local authority to respond to an applicant's access to information request openly, accurately and completely. This means that local authorities should make reasonable efforts to not only identify and seek out records responsive to an applicant's access to information request, but to explain the steps in the process and seek any necessary clarification on the nature or scope of the request within the legislated timeframe.

[29] Regarding the obligation to search for records, the threshold to be met is one of "reasonableness." In other words, it is not a standard of perfection, but rather what a fair and rational person would expect or consider acceptable.

[30] The *Guide to LA FOIP*, Ch. 3 also states at page 12, that a reasonable search is one in which an employee, experienced in the subject matter of the records, expends a reasonable effort to locate records which are reasonably related to the request. What is reasonable depends on the request and related circumstances. The local authority should provide my office with detailed information about its efforts to conduct a search.

[31] A local authority may respond to an access to information request by stating that “records do not exist” in two circumstances. It may respond that way where its search for records did not produce records. Second, where records may exist, but they are not in the “possession or control” of the local authority (see my office’s [Review Report 029-2021](#)).

[32] Where the claim is that records do not exist, LA FOIP does not require that the local authority prove with absolute certainty that the records do not exist. My office may consider reasonable explanations for why a record would not exist, but a local authority still needs to demonstrate that it made reasonable efforts to search.

[33] The *Guide to LA FOIP*, Ch. 3 at pages 14 to 15, sets out some examples of the type of information that my office will consider in evaluating the search efforts. The following examples are relevant here:

- For general requests – tie the subject matter of the request to the departments/divisions/branches/committees/boards included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search.
- Describe how records are classified within the records management system. For example, are the records classified by alphabet, year, function, and subject.
- Consider providing a copy of your organization’s record schedule and screen shots of the electronic directory (folders & subfolders).
- Explain how a search of mobile electronic devices was conducted (i.e., laptops, smart phones, cell phones, tablets).
- Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicate what key terms were used to search if applicable.
- Indicate the calendar dates each employee searched.

- Indicate how long the search took for each employee.
- Indicate what the results were for each employee's search.
- Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see my office's resource, [*Using Affidavits in a Review with the IPC*](#).

[34] I now turn to consider the RM's search efforts.

[35] The RM provided my office with a table setting out the steps taken to respond to the Applicant's request. According to the table, the searches were conducted on February 22 and 24, 2024. They included a search through the following electronic record holdings: "file folder, Munisoft documents, Working, Minutes." The keywords used to complete the search were "Minutes, Agenda, administrative Reports, Foreman reports." On February 22, 24 and 29, 2024, paper records were also searched including "Minute Binder, Filing Cabinet." This part of the search took six hours and according to the RM's chart, it uncovered 484 pages of records.

[36] The RM did not provide my office with any information about its records management system, how records are stored and organized, why and how the record holdings were chosen for the search, and the knowledge of the employee assigned to conduct the search. Nor did it provide information about its search of computer hard drives, laptops and email folders. Nor did the RM explain why it only identified 272 pages of responsive records when according to its "Responsive Documents Search" document it located 484 pages of records. It also failed to explain the discrepancy between this, and its statement made in an email to my office dated February 29, 2024, that there were 414 pages of responsive records sent to the Applicant.

[37] The Applicant believes that the search was not adequate and additional records exist. For example, the Applicant stated that agendas for meetings held on November 10, 15, 23, December 8, 13, 29, 2022; and January 12, 19, 31, February 9, 22, March 9, April 13, May 11, June 8, July 13, August 2, 10, September 1, 14, October 12, 17, 18, 25, and November 2, 2023 were not included in the package of records released.

- [38] The Applicant also stated that the “Statements of Financial Activities – Detailed Report” for October, November, December 2022 are missing. They added that the first page of the December 13, 2022 meeting minutes and the last page of the December 29, 2022 minutes, is missing.
- [39] My office provided the RM with a copy of the Applicant’s statement regarding missing records. Subsequently, the RM conducted another search for records and identified 33 pages of additional records. Among the records that were found were lists of invoices, minutes of meetings and employee cheque history reports. Details are set out in Appendix B.
- [40] The RM also found and released the first page of the December 13, 2022 meeting minutes and the last page of the December 29, 2022 minutes. It also released the records that were not properly photocopied.
- [41] Regarding the Applicant’s concern about missing agendas, the RM stated that the agendas did not form part of the minutes of the meetings and therefore they are not considered responsive to the request. Regarding the “Statements of Financial Activities – Detailed Report,” the RM stated that the records do not exist.
- [42] The RM did not provide my office with any information about its second search for records including the time involved, the repositories searched and who conducted the search. Nor did it explain why the “Statements of Financial Activities – Detailed Report” do not exist.
- [43] In terms of why these records were not produced to the Applicant initially, the RM advised my office that in deciding what records to release to the Applicant, it decided to only release the records that it felt were necessary to enable the Applicant to do their job. In doing so, it thought it was setting appropriate limits to the Applicant’s request because the Applicant had stated that they wanted the requested information “to equip [them] to efficiently do [their] job.”

- [44] The Applicant continues to dispute the reasonableness of the RM's search efforts noting that additional records must exist. In particular, they believe that "Statements of Financial Activities – Detailed Reports" for the months of October to December 2022 and February to July 2023, should exist as the related minutes of the meetings note that these reports were "approved as presented" at the meeting. They also stated that the minutes of the September 14, 2023 meeting refer to a copy of a contract being attached, but the contract was not included as one of the responsive records. A review of the relevant minutes reveals that the reference to the attachment appears at Part Four, Page 6.
- [45] I appreciate that the RM conducted a second search for records during the course of this review. However, based on the limited amount of information provided to me about the RM's first and second search, and in the circumstances outlined above, I find that the RM has not completed a reasonable search for records. I also note that the RM has not offered an explanation as to why it was able to find records such as minutes of meetings that were not found during the first search. Nor has it offered an explanation of why there is a discrepancy between the pages located during the search, what was released to the Applicant and what was provided to my office. It appears that some records may be missing, and I do not have a clear explanation as to why. I recommend that, within 30 days of the issuance of this Report, the RM conduct another search for records and issue a section 7 decision to the Applicant with a copy to my office.
- [46] Before I leave this issue, I will address some concerns about the way in which this access to information request was processed. As noted above, subsection 5.1(1) of LA FOIP requires that local authorities explain the steps in the process and seek any necessary clarification on the nature or scope of the request within the legislated timeframe. How a local authority fulfils this duty to assist will vary according to the circumstances of each request (*Guide to LA FOIP*, Ch. 3, pp. 16 to 17).
- [47] The requirement to respond accurately, set out in subsection 5.1(1) of LA FOIP, means that the local authority must provide the applicant with sufficient and correct information about the access process and how decisions are made. This includes understanding what

the applicant is actually looking for and includes clarifying the nature of the access to information request.

[48] It appears that if the RM had attempted to clarify the request with the Applicant some of the challenges it faced in processing the request may have been overcome. For example, the RM should not have assumed that the Applicant wished to narrow the scope of the request to the information “to equip [them] to efficiently do [their] job.” As set out above, the Applicant’s request was for minutes of meetings. It appears that the Applicant used this phrase to explain why they needed the records, and they did not intend to limit the scope of the request. Therefore, to determine the scope of the request, the RM should have focused on the description of the records the Applicant sought access to, which they clearly identified, and not on the reason why the access request was filed. If the RM found the wording of the Applicant’s request unclear, then it had an obligation pursuant to subsection 5.1(1) of LA FOIP to clarify it with the Applicant.

[49] It appears that the RM had some organizational challenges with properly processing the request and participating in this review. First, the RM provided the Applicant with paper copies of the records that were not paginated. Second, the RM did not separate the records into parts, as it did with the records provided to my office. Third, the RM provided my office with an electronic version of the records; however, it did not ensure that the page numbers of the redacted and unredacted versions were aligned. Fourth, the RM provided my office with an index of records that referred to the redaction or severance number applied to each severance and not the page numbers that were assigned to the copies of the records. Furthermore, the RM made some errors in assigning the redaction numbers to the severances so that in some cases the same number was applied to different redactions on different pages.

[50] I appreciate that the RM’s staff had limited experience with LA FOIP but the effect of these errors, inconsistencies and lack of organization was that additional time was required by my office to process this review. As I have said in the past, access delayed is access denied.

[51] Guidance on responding to access requests for local authorities can be found in my office's [*Best Practices for Responding to Access Requests, LA FOIP 101: What Municipalities Need to Know*](#), [*LA FOIP Foundations Webinar Series: Access and Privacy Tips for Local Authorities*](#) and the [*Guide to LA FOIP, Chapter 3*](#).

[52] My office's [*Rules of Procedure*](#) (Rules) provides guidance on preparing an index of records, submissions and preparing records for the purposes of a review. I encourage the RM to consult these Rules. Staff in my office are also available to assist local authorities. Requests for summary advice can be made to our intake unit at intake@oipc.sk.ca.

[53] I recommend that, within 30 days of the issuance of this Report, the RM complete a review of and revise any policies and procedures that it has in place regarding access to information requests and reviews to ensure that they comply with LA FOIP.

[54] As noted in the background section of this Report, the RM's section 7 decision dated February 29, 2024, did not set out the specific exemptions it relied on to withhold information from the Applicant. Therefore, it did not comply with subsection 7(2)(d) of LA FOIP which states:

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

...

(d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;

[55] I recommended that the RM issue another section 7 decision to the Applicant within 30 days of issuance of this Report. When issuing its section 7 decision, the RM should take steps to ensure that it complies with all of the requirements of section 7 of LA FOIP.

3. Did the RM properly apply subsection 28(1) of LA FOIP?

[56] As noted above, the right to access records in the possession or under the control of a local authority is set out in section 5 of LA FOIP. Where the records contain information about

individuals other than the requester, a local authority must consider if section 28 of LA FOIP, which is a mandatory exemption, applies.

[57] Section 28 of LA FOIP prohibits the disclosure of personal information of individuals other than the requester unless the individual about whom the information pertains consents to its disclosure or if disclosure without consent is authorized by one of the enumerated exceptions in subsection 28(2) or section 29 of LA FOIP (*Guide to LA FOIP*, Chapter 6, “Protection of Privacy”, updated February 27, 2023 [*Guide to LA FOIP*, Ch. 6], p. 163).

[58] Subsection 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.

[59] When deciding if subsection 28(1) of LA FOIP was properly applied, I must first determine if the withheld information about other individuals qualifies as their personal information pursuant to subsection 23(1) of LA FOIP. Subsection 23(1) of LA FOIP states that to qualify as personal information, the information must be about an identifiable individual and personal in nature. It also provides a list of examples of information that would qualify as personal information.

[60] My office’s *Guide to LA FOIP*, Ch. 6 at page 39, states that information is about an “identifiable individual” if:

- The individual can be identified from the information (e.g., name, where they live); or
- The information, when combined with information otherwise available, could reasonably be expected to allow the individual to be identified.

[61] The *Guide to LA FOIP*, Ch. 6 at page 40, includes the following definition of “identifiable”:

“Identifiable” means that it must be reasonable to expect that an individual may be identified if the information were disclosed. The information must reasonably be capable of identifying particular individuals because it either directly identifies a person

or enables an accurate inference to be made as to their identity when combined with other available sources of information (data linking) or due to the context of the information in the record.

[62] According to the *Guide to LA FOIP*, Ch. 6 at page 41:

- “Personal in nature” requires that the information reveal something personal about the identifiable individual.
- “Personal” means of, affecting or belonging to a particular person; of or concerning a person’s private rather than professional life.

Therefore, information that relates to an individual in a professional, official, or business capacity could only qualify if the information revealed something personal about the individual for example, information that fits the definition of employment history.

[63] The RM’s submission on this issue was brief. The RM stated that information about payroll deductions that was withheld from various records qualified as personal information. As the Applicant stated that they are not interested in gaining access to that information, it is outside the scope of this review. Regarding other personal information, the RM stated:

Additionally, individual names appearing in the minutes related to personal harassment claims have been redacted. These meetings were closed to the public to safeguard all participants involved.

[64] In its index of records, it appears that the RM intended to claim that the information withheld from Part Three, page 45, severance 71 was information relating to personal tax deductions and that it qualified as personal information pursuant to subsection 23(1)(i) of LA FOIP. However, on a review of Part Three, page 45, severance 71, it appears that the withheld information is the date of a cheque, the vendor name or account, and some particulars of the payment that are not related to payroll deductions. This information does not qualify as personal information because there is nothing personal about the information that has been withheld. The information is about an individual’s work-related role with the RM and about the methods used to make a payment to the individual. I find the RM did not properly apply subsection 28(1) of LA FOIP to this information.

- [65] The RM also applied subsection 28(1) of LA FOIP to information in Part Five, page 1 (name of an individual in incident report involving damage to property). This information appears in an incident report related to a work matter. It does not qualify as personal information because it relates to the individual in a work or professional capacity. I find the RM did not properly apply subsection 28(1) of LA FOIP to this information.
- [66] In Part Two, page 30, the RM withheld the name of an individual from a Foreman's Report. The name of the individual appears in a work-related report and does not relate to a personal matter. It does not qualify as personal information; therefore, I find the RM did not properly apply subsection 28(1) of LA FOIP to this information.
- [67] The RM also applied subsection 28(1) of LA FOIP to the name, contact details and signature of the lessee in a lease agreement with the RM. This information appears at Part One, pages 15 to 18. My office's [Review Report 086-2019](#) found that the names and signatures of a witness and a representative of a corporation that appeared on a lease agreement between the Ministry of Central Services and the corporation did not qualify as the individuals' personal information pursuant to subsection 24(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) (the provincial equivalent to subsection 23(1) of LA FOIP) because the individuals signed the lease in a work or professional capacity. Similar findings were made in [Review Report 149-2019, 191-2019](#), which also involved subsection 24(1) of FOIP.
- [68] While the individual who executed the lease agreement at issue here did not do so on behalf of a corporation, it is apparent from a review of the record that the lease relates to the individual's business or work. Therefore, the same approach should be followed here. As the lease agreement is a business arrangement with the RM, it appears in a professional or work-related context and does not qualify as personal information. I find the RM did not properly apply subsection 28(1) of LA FOIP to this information.
- [69] Finally, the RM applied subsection 28(1) of LA FOIP to the names of individuals who were involved in an incident reported by RM staff to management appearing in Part Two, page 32. The individuals in question appear to have been involved in their personal capacity

and not as officers or employees of the RM. I find that information about their involvement qualifies as their personal information pursuant to subsection 23(1)(k)(i) 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

[70] Therefore, I find the RM properly applied subsection 28(1) of LA FOIP to the information described in the preceding paragraph. I recommend that the RM continue to withhold this information pursuant to subsection 28(1) of LA FOIP.

[71] Where I have found the RM has not properly applied subsection 28(1) of LA FOIP, I recommend it release this information to the Applicant within 30 days of the issuance of this Report as no other exemptions were applied to this information. The details of my findings and recommendations are set out in Appendix A and Appendix B

[72] I now turn to consider if the RM properly applied subsections 18(1)(c) and (d) of LA FOIP.

4. Did the RM properly apply subsections 18(1)(c) and (d) of LA FOIP?

[73] Before I turn to consider the tests for the application of subsections 18(1)(c) and (d) of LA FOIP, I note that subsection 117(1)(a) of *The Municipalities Act* (MA) is relevant here. That provision states:

117(1) Any person is entitled at any time during regular business hours to inspect and obtain copies of:

(a) any contract approved by the council, any bylaw or resolution and any account paid by the council relating to the municipality;

[74] This provision must be read in conjunction with subsection 4(b) of LA FOIP which provides:

4 This Act:

...

(b) does not in any way limit access to the type of information or records that is normally available to the public;

[75] Subsection 117(1)(a) of the MA does not explicitly state that any person is entitled to inspect invoices, nor does it state that any person is entitled to inspect a list of invoices. It states, instead, that any person is entitled to inspect “any account paid.” The MA does not define the term “account paid.”

[76] *The Merriam-Webster Dictionary* ([online](#)) provides the following two definitions for “account”:

“a record of debit and credit entries to cover transactions involving a particular item or a particular persona or concern;

a statement of transactions during a fiscal period and the resulting balance.”

[77] *Black’s Law Dictionary*, 12th Edition, 2024, defines “account” as:

4. A detailed statement of the debits and credits between parties to a contract or to a fiduciary relationship; a reckoning of monetary dealings.

[78] As I said in [Review Report 229-2017, 031-2017 – Part II](#), there are many varied and broad definitions of “account” and my view is that “account paid” is a concept and is not meant to reflect only one type of record. Having reviewed the records, it appears that some of the information withheld from the various “lists of invoices” set out in Appendix A and Appendix B would qualify as an “account paid” because it includes information about amounts paid in relation to specific invoices. This includes the withheld information described on the “list of invoices” as “Payment Amount.”

[79] In the case of most of the invoices that appear on the lists of invoices at issue, the RM has released the “Payment Amount.” However, in some cases, such as in relation to the Part Four, pages 10, 11, 12, 47, 48 and 49, the RM withheld the “Payment Amount.”

- [80] The RM is required to make information about the “Payment Amount” available for inspection under subsection 117(1)(a) of *The Municipalities Act*. Applying subsection 4(b) of LA FOIP, subsections 18(1)(c) and (d) of LA FOIP cannot be applied to limit the Applicant’s right of access to this information.
- [81] Therefore, I find that the RM did not properly apply subsections 18(1)(c) and (d) of LA FOIP to the “Payment Amounts” in Part Four, pages 10, 11, 12, 47, 48 and 49. I recommend that the RM release this information to the Applicant within 30 days of the issuance of this Report. Details are set out in Appendix A and Appendix B.
- [82] Subsections 18(1)(c) and (d) of LA FOIP are mandatory exemptions. Subsection 18(1)(c) is a harm-based exemption, intended to protect the business interests of third parties and to ensure that local authorities are able to maintain the confidentiality necessary to effectively carry on business with the private sector (*Guide to LA FOIP*, Chapter 4, “Exemptions from the Right of Access,” updated October 18, 2023 [*Guide to LA FOIP*, Ch. 4], at page 170).
- [83] Subsection 18(1)(c)(i) of LA FOIP permits refusal of access in situations where disclosure of information could reasonably be expected to result in financial loss or gain to a third party. Subsection 18(1)(c)(ii) of LA FOIP permits refusal where disclosure could reasonably be expected to prejudice the competitive position of a third party. Subsection 18(1)(c)(iii) of LA FOIP permits refusal of access in situations where disclosure of information could reasonably be expected to interfere with the contractual or other negotiations of a third party.
- [84] Subsection 18(1)(d) of LA FOIP is not a harm-based exemption. It permits refusal of access in situations where a record contains a statement of a financial account relating to a third party with respect to the provision of routine services from a local authority (*Guide to LA FOIP*, Ch. 4, p. 199).
- [85] Subsections 18(1)(c) and (d) of LA FOIP provide as follows:

18(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...
(c) information, the disclosure of which could reasonably be expected to:

(i) result in financial loss or gain to;

(ii) prejudice the competitive position of; or

(iii) interfere with the contractual or other negotiations of;

a third party; or

(d) a statement of a financial account relating to a third party with respect to the provision of routine services from a local authority.

[86] The two-part test for subsection 18(1)(c)(i) of LA FOIP, which can be found in my office's *Guide to LA FOIP*, Ch. 4 at page 185, is as follows:

1. What is the financial loss or gain being claimed?
2. Could release of the record reasonably be expected to result in financial loss or gain to a third party?

[87] The two-part test for the application of subsection 18(1)(c)(ii) of LA FOIP is set out on pages 190 to 193 of the *Guide to LA FOIP*, Ch. 4. It is as follows:

1. What is the prejudice to a third party's competitive position that is being claimed?
2. Could release of the record reasonably be expected to result in the prejudice?

[88] The two-part test for the application of subsection 18(1)(c)(iii) of LA FOIP is set out on pages 195 and 196 of the *Guide to LA FOIP*, Ch. 4. It is as follows:

1. Are there contractual or other negotiations occurring involving a third party?
2. Could release of the record reasonably be expected to interfere with the contractual or other negotiations of a third party?

[89] Given that subsection 18(1)(c) of LA FOIP is a harm-based exemption, local authorities should provide information and evidence that shows how disclosure of the information

would cause harm, indicate the extent of the harm and provide facts to support the assertions made (*Guide to LA FOIP*, Ch. 4, pp. 187, 192 and 197).

[90] The local authority does not have to prove that a harm is probable, but it needs to show that there is a “reasonable expectation of harm” if any of the information were to be released. However, local authorities should not assume that the harm is self-evident. The harm must be described in a precise and specific way in order to support the application of the exemption (*Guide to LA FOIP*, Ch. 4, p. 191).

[91] The two-part test for the application of subsection 18(1)(d) of LA FOIP is set out on pages 199 and 200 of the *Guide to LA FOIP*, Ch. 4. It is as follows:

1. Is the record a statement of a financial account relating to a third party with respect to the provision of routine services?
2. Is the statement from a local authority?

[92] My office’s *Guide to LA FOIP*, Ch. 4 at page 200, states:

- A “statement” is a formal written or oral account, setting down facts, a document setting out the items of debit and credit between two parties.
- A “statement of a financial account” is not defined in LA FOIP. However, the following is helpful in interpreting what the Legislative Assembly intended by this phrase:
 - A “statement of account” is a report issued periodically (usually monthly) by a creditor to a customer, providing certain information on the customer’s account, including the amounts billed, credits given, and the balance due; a document setting out the items of debit and credit between two parties.
 - An “accounting” means a detailed statement of the debits and credits between parties to a contract or to a fiduciary relationship; a reckoning of monetary dealings.
 - An “account” means a record of financial expenditure and receipts; a bill taking the form of such a record.
 - “Financial” means of or pertaining to revenue or money matters.

[93] The RM applied subsections 18(1)(c) and (d) of LA FOIP to what is described as the “Detail Amount” or “Invoice Amount” for various products and services such as equipment repairs, maintenance, advertising costs, insurance costs and copier charges while in most cases releasing the information about the “Payment Amount” paid to these organizations. I have already found that subsections 18(1)(c) and (d) of LA FOIP do not apply to the “Payment Amount” above. In Part Three, pages 39, 40, 45, 46, 47 and 48, the RM also withheld particulars of the invoices such as a description of the goods or services to which they relate.

[94] The RM appears to equate the “Detail Amount” or “Invoice Amount” to the pricing information. Its submission on the application of subsection 18(1)(c) of LA FOIP stated:

Third-party pricing information has also been omitted, as the RM of Reford participates in the Canoe Procurement Program, which provides municipalities with discounts not available to regular businesses. Disclosure of this pricing information could, in the opinion of the head, result in financial hardship.

[95] Before I turn to the applicable tests, I note that both subsections 18(1)(c) and (d) of LA FOIP apply to third party information. The RM’s submission did not specifically address whether the withheld information from the “lists of invoices” related to third parties or employees. I have already found in paragraph [24] of this Report that some of the records at issue include information that involves third parties. This finding includes the records described as “lists of invoices” in Appendix A and B. For example, in these records there is information about invoices or payments for the purchase of goods such as stationary, fuel, equipment, parts and tools which appears to be third party information.

[96] However, it is also apparent that some of the information in the “lists of invoices” does not relate to third parties. For example, some of the information appears to relate to services provided by individuals such as janitorial services, advertising, wages and mentorship or administrative and other consulting services who were likely either employed by the RM or were providing services under a contract. This type of information does not appear to relate to third parties as the individuals providing the services would qualify as “employees” pursuant to subsection 2(1)(b.1) of LA FOIP. Regardless, for the reasons set

out later in this Report, it is not necessary for me to make a determination on whether each line item in the “lists of invoices” qualifies as third party information.

Subsection 18(1)(c) of LA FOIP

- [97] The RM’s submission on the application of subsection 18(1)(c) of LA FOIP is set out in full in paragraph [94] above. In order to demonstrate that subsection 18(1)(c)(i) of LA FOIP applies to the withheld information, the RM should have provided information or evidence explaining the nature of the information withheld. To establish that the release could reasonably result in harm to third parties, the RM should have identified the financial loss or gain that would result from disclosure of the withheld information and explained how the financial loss or gain might occur.
- [98] Subsection 18(1)(c)(ii) of LA FOIP requires that the RM provide information and evidence to demonstrate that the withheld information, if released, could be used by a potential business competitor, whether or not that competitor currently competes for the same market share. To meet part two of the test for this exemption, the RM should have provided information or evidence to show that the disclosure of the information would give competitors some form of competitive advantage that would disadvantage or harm the third party. There must be a direct link between the disclosure and the harm, and the harm must reasonably be expected to ensue from disclosure. It is not sufficient to assert that disclosure would create a more competitive environment (*Guide to LA FOIP*, Ch. 4, pp. 190 and 191).
- [99] In demonstrating that subsection 18(1)(c)(iii) of LA FOIP applies, the RM should have provided evidence or information explaining the nature of the information withheld, identifying the contractual or other negotiations occurring and explaining how release of the information could interfere with those contractual or other negotiations. The *Guide to LA FOIP*, Ch. 4 at page 198, sets out a series of questions to assist a local authority in determining if disclosure could result in harms protected by this exemption. For example, what negotiations are or would be affected by disclosure, what stage the negotiations are at, what type of interference would the third party experience, etc. The RM did not provide my office with any of this type of information.

Subsection 18(1)(d) of LA FOIP

[100] The RM’s submission did not address the application of subsection 18(1)(d) of LA FOIP.

[101] Regarding part one of the test, the withheld information does not qualify as a “statement of a financial account” because it is not a report issued by a creditor to a customer. It is a statement about the amounts of the multiple invoices *paid* by the RM over the specified period, including the details of the cheques used to make the payment.

[102] Nor does the withheld information meet part two of the test because it is not “from a local authority.” The withheld information relates to invoices *received by* the RM from the various suppliers of goods or services. The invoices were not “from a local authority.”

[103] Section 51 of LA FOIP places the burden of proof on a local authority of establishing that access to information may be refused. It states:

51 In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned.

[104] As the RM did not provide sufficient arguments and evidence to support its reliance on subsections 18(1)(c) and (d) of LA FOIP, I find that the RM did not demonstrate, pursuant to subsection 51 of LA FOIP, that these exemptions apply. Details of my findings and recommendations are set out in Appendix A and Appendix B.

IV FINDINGS

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

[106] I find that the RM did not conduct a reasonable search for records.

[107] I find that the RM properly applied subsection 28(1) of LA FOIP to some information but not all.

[108] I find that the RM did not demonstrate, pursuant to section 51 of LA FOIP, that subsections 18(1)(c) and (d) of LA FOIP applies.

V RECOMMENDATIONS

[109] I recommend that, within 30 days of the issuance of this Report, the RM complete a review of and revise any policies and procedures that it has in place regarding access to information requests and reviews to ensure that they comply with LA FOIP.

[110] I recommend that, within 30 days of the issuance of this Report, the RM conduct another search for responsive records and issue a section 7 decision to the Applicant with a copy to my office.

[111] I recommend that the RM take steps to ensure that it complies with all of the requirements of section 7 of LA FOIP when it issues the section 7 decision.

[112] I recommend that, within 30 days of the issuance of this Report, the RM release to the Applicant and continue to withhold information, as set out in Appendix A and B to this Report.

Dated at Regina, in the Province of Saskatchewan, this 26th day of September, 2024.

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

Appendix A

Part and Page No.	Redaction No.	LA FOIP Exemption Applied	Description	Commissioner's Findings and Recommendations
Part Four, p. 1	1 to 3	15(1)(b)(ii); 28(1)	Minutes of September 1, 2023 meeting	N/A because outside the scope of the review
Part Four, p. 2	4 to 6	15(1)(b)(ii); 28(1)	Minutes of September 1, 2023 meeting	N/A because outside the scope of the review
Part Four, p. 5	7	15(1)(b)(ii); 28(1)	Minutes of September 14, 2023 meeting	N/A because outside the scope of the review
Part Four, p. 6	8 to 13	15(1)(b)(ii); 28(1)	Minutes of September 14, 2023 meeting	N/A because outside the scope of the review
Part Four, p. 9	14 to 15	18(1)(c), (d)	List of invoices for August 2023	18(1)(c) and (d) do not apply, release
Part Four, p. 10	16 to 17	18(1)(c), (d)	List of invoices for August 2023	18(1)(c) and (d) do not apply, release
Part Four, p. 11	18 to 19	18(1)(c), (d)	List of invoices for August 2023	18(1)(c) and (d) do not apply, release
Part Four, p. 12	19 to 20	18(1)(c), (d)	List of invoices for August 2023	18(1)(c) and (d) do not apply, release
Part Four, p. 13	21	28(1); 18(1)(c), (d)	Employee Cheque History Report August 2023	N/A because outside the scope of the review
Part Four, p. 21	23 to 24	15(1)(b)(ii); 28(1)	Minutes of October 12, 2023 meeting	N/A because outside the scope of the review
Part Four, p. 36	25 to 26	18(1)(c), (d)	List of invoices September 2023	18(1)(c) and (d) do not apply, release
Part Four, p. 37	27	18(1)(c), (d)	List of invoices September 2023	18(1)(c) and (d) do not apply, release
Part Four, p. 38	28	18(1)(c), (d)	List of invoices September 2023	18(1)(c) and (d) do not apply, release
Part Four, p. 39	29	28(1), 23(1)(i)	Employee Cheque History Report September 2023	N/A because outside the scope of the review
Part Four, p 40	30	28(1)	Minutes of Meeting November 2, 2023	N/A because outside the scope of the review
Part Four, p. 46	31	18(1)(c), (d)	List of invoices November 2023	18(1)(c) and (d) do not apply, release
Part Four, p. 47	32 to 35	18(1)(c), (d)	List of invoices December 2023	18(1)(c) and (d) do not apply, release

Part Four, p. 48	36 to 39	18(1)(c), (d)	List of invoices December 2023	18(1)(c) and (d) do not apply, release
Part Four, p. 49	40 to 41	18(1)(c), (d)	List of invoices December 2023	18(1)(c) and (d) do not apply, release
Part Four, p. 50	42	18(1)(c), (d)	List of invoices November 2023	18(1)(c) and (d) do not apply, release
Part Four, p. 52	43 to 45	18(1)(c), (d)	List of invoices October/November 2023	18(1)(c) and (d) do not apply, release
Part Four, p. 53	46	18(1)(c), (d)	List of invoices October 2023	18(1)(c), (d) do not apply, release
Part Three, p. 1	47	28(1)	Employee Cheque History Report April 2023	N/A because outside the scope of the review
Part Three, p. 10	48	18(1)(c), (d)	List of invoices paid May/June 2023	18(1)(c) and (d) do not apply, release
Part Three, p. 11	49	18(1)(c), (d)	List of invoices paid May/June 2023	18(1)(c) and (d) do not apply, release
Part Three, p. 12	50	18(1)(c), (d)	List of invoices paid May/June 2023	18(1)(c) and (d) do not apply, release
Part Three, p. 13	51	18(1)(c), (d)	List of invoices paid May/June 2023	18(1)(c) and (d) do not apply, release
Part Three, p. 14	52	28(1)	Employee Cheque History Report June 2023	N/A because outside the scope of the review
Part Three, p. 15	53	28(1)	Employee Cheque History Report June 2023	N/A because outside the scope of the review
Part Three, p. 16	54	28(1); 18(1)(c), (d)	Employee Cheque History Report June 2023	N/A because outside the scope of the review
Part Three, p. 27	54	18(1)(c), (d)	List of invoices June 2023	18(1)(c) and (d) do not apply, release
Part Three, p. 28	55	18(1)(c), (d)	List of invoices June 2023	18(1)(c) and (d) do not apply, release
Part Three, p. 29	56	18(1)(c), (d)	List of invoices June 2023	18(1)(c) and (d) do not apply, release
Part Three, p. 30	57	18(1)(c), (d)	List of invoices June 2023	18(1)(c) and (d) do not apply, release

Part Three, p. 39	58 to 64	18(1)(c), (d)	List of invoices July 2023	18(1)(c) and (d) do not apply, release
Part Three, p. 40	65 to 69	18(1)(c), (d)	List of invoices July 2023	18(1)(c) and (d) do not apply, release
Part Three, p. 44	70	28(1)	Employee Cheque History Report July 2023	N/A because outside the scope of the review
Part Three, p. 45	71	28(1)	List of invoices July 2023	28(1) does not apply, release
Part Three, p. 45	72 to 80	18(1)(c), (d)	List of invoices July 2023	18(1)(c) and (d) do not apply, release
Part Three, p. 46	81 to 90	18(1)(c), (d)	List of invoices July 2023	18(1)(c) and (d) do not apply, release
Part Three, p. 47	91 to 99	18(1)(c), (d)	List of invoices July 2023	18(1)(c) and (d) do not apply, release
Part Three, p. 48	100 to 104	18(1)(c), (d)	List of invoices July 2023	18(1)(c) and (d) do not apply, release
Part Two, p. 12	105	18(1)(c), (d)	List of invoices paid January 2023	18(1)(c) and (d) do not apply, release
Part Two, p. 13	106	18(1)(c), (d)	List of invoices paid January 2023	18(1)(c) and (d) do not apply, release
Part Two, p. 14	107	18(1)(c), (d)	List of invoices paid January 2023	18(1)(c) and (d) do not apply, release
Part Two, p. 15	108	28(1)	Employee Cheque History Report January 2023	N/A because outside the scope of the review
Part Two, p. 30	109	28(1)	Appendix to Foreman's Report March 9, 2023	28(1) does not apply, release
Part Two, p. 32	110 to 115	28(1)	Appendix to Foreman's Report March 9, 2023	28(1) applies, continue to withhold
Part Two, p. 33	106 to 107	18(1)(c), (d)	List of Land with arrears of taxes March 9, 2023	N/A because outside the scope of the review
Part Two, p. 33	109 to 123	28(1)	List of Land with arrears of taxes March 9, 2023	N/A because outside the scope of the review
Part Two, p. 59	125	28(1)	Minutes of April 13, 2023 meeting -	N/A because outside the scope of the review

			Names of two individual	
Part Two, p. 60	126	18(1)(c), (d)	List of invoices April 2023	18(1)(c) and (d) do not apply, release
Part Two, p. 61	127	18(1)(c), (d)	List of invoices April 2023	18(1)(c) and (d) do not apply, release
Part Two, p. 62	128	18(1)(c), (d)	List of invoices April 2023	18(1)(c) and (d) do not apply, release
Part Two, p. 64	129	28(1)	Employee Cheque History Report March 2023	N/A because outside the scope of the review
Part Two, p. 65	130	28(1)	Employee Cheque History Report March 2023	N/A because outside the scope of the review
Part Two, p. 66	131	18(1)(c), (d)	List of invoices February 2023	18(1)(c) and (d) do not apply, release
Part Two, p. 67	132	18(1)(c), (d)	List of invoices February 2023	18(1)(c) and (d) do not apply, release
Part Two, p. 68	133	18(1)(c), (d)	List of invoices April/May 2023	18(1)(c) and (d) do not apply, release
Part Two, p. 69	134	28(1)	Appendix A to Foreman's Report May 11, 2023 – individual's name withheld	N/A because outside the scope of the review
Part Two, p. 84	135	18(1)(c), (d)	List of invoices May 2023	18(1)(c) and (d) do not apply, release
Part Two, p. 85	136	18(1)(c), (d)	List of invoices May 2023	18(1)(c) and (d) do not apply, release
Part Two, p. 86	137	18(1)(c), (d)	List of invoices May 2023	18(1)(c) and (d) do not apply, release
Part Two, p. 87	138	18(1)(c), (d)	List of invoices May 2023	18(1)(c) and (d) do not apply, release
Part One, p. 15 to 18	139 to 142	28(1)	Attachment to December 8, 2022 Minutes – name, contact details and signature of lessee	28(1) does not apply, release
Part One, p. 20	143	18(1)(c), (d)	List of paid invoices December 22/January 23	18(1)(c) and (d) do not apply, release
Part One, p. 21	144	18(1)(c), (d)	List of paid invoices December 22/January 23	18(1)(c) and (d) do not apply, release
Part One, p. 22	145	18(1)(c), (d)	List of paid invoices December 22/January 23	18(1)(c) and (d) do not apply, release

Part One, p. 23	146	18(1)(c), (d)	List of paid invoices December 22/January 23	18(1)(c) and (d) do not apply, release
Part One, p. 25	147	18(1)(c), (d)	List of paid invoices November 22/December 22	18(1)(c) and (d) do not apply, release
Part One, p. 26	148	28(1)	Employee Cheque History Report November 2022	N/A because outside the scope of the review
Part One, p. 31	149	28(1),	Employee Cheque History Report October 2022	N/A because outside the scope of the review
Part One, p. 32	150	28(1)	Employee Cheque History Report November 2022	N/A because outside the scope of the review
Part One, p. 33	151	18(1)(c), (d)	List of paid invoices October/November 2022	18(1)(c) and (d) do not apply, release
Part One, p. 34	152	18(1)(c), (d)	List of paid invoices October/November 2022	18(1)(c) and (d) do not apply, release
Part One, p. 36	152	18(1)(c), (d)	Contract attached to Minutes of Meeting January 12, 2023 – name and address of individual redacted	N/A because outside the scope of the review
Part One, p. 37	153	28(1)	Signature	N/A because outside the scope of the review
Part One, p. 47	154	28(1)	Employee Cheque History Report December 2022	N/A because outside the scope of the review
Part One, p. 48	155	28(1)	Employee Cheque History Report December 2022	N/A because outside the scope of the review
Part Five, p. 1	156	28(1)	Name of individual	28(1) does not apply, release

Appendix B

Part and Page No.	LA FOIP Exemption Applied	Description	Commissioner's Findings and Recommendations
Part Six, p. 1	28(1)	Employee Cheque History Report October 2022	N/A because outside the scope of the review
Part Six, p. 2	28(1)	Employee Cheque History Report November 2022	N/A because outside the scope of the review
Part Six, p. 3	28(1)	Employee Cheque History Report November 2022	N/A because outside the scope of the review
Part Six, pp. 4 to 6	18(1)(c), (d)	List of invoices for December 2022	18(1)(c) and (d) do not apply, release
Part Six, pp. 7 to 8	Released in full	Minutes of December 13, 2022 meeting	N/A
Part Six, pp. 9 to 11	Released in full	Minutes of December 29, 2022 meeting	N/A
Part Six, pp. 12 to 13	18(1)(c), (d)	List of invoices for February 2023	18(1)(c) and (d) do not apply, release
Part Six, p. 14	18(1)(c), (d)	List of invoices for March 2023	18(1)(c) and (d) do not apply, release
Part Six, p. 15	28(1);	Employee Cheque History Report February 2023	N/A because outside the scope of the review
Part Six, p. 16	28(1);	Employee Cheque History Report March 2023	N/A because outside the scope of the review
Part Six, p. 17	28(1)	Employee Cheque History Report January to March 2023	N/A because outside the scope of the review
Part Six, pp. 18 to 23	18(1)(c), (d)	List of invoices April 12, 2023	18(1)(c) and (d) do not apply, release
Part Six, pp. 24 to 28	18(1)(c), (d)	List of invoices May 9, 2023	18(1)(c) and (d) do not apply, release
Part Six, pp. 29 to 32	Released in full	Minutes of Meeting June 8, 2023	N/A
Part Six, p. 33	28(1)	Employee Cheque History Report January to March 2023	N/A because outside the scope of the review