



REVIEW REPORT 072-2024

Regina Police Service

June 7, 2024

Summary: The Applicant submitted an access to information request to the Regina Police Service (RPS) for records regarding the investigation into a Member of the Legislative Assembly (MLA). RPS disclosed some records to the Applicant but withheld others and cited subsections 14(1)(c) 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. The Commissioner found that LA FOIP did not apply to some of the records at issue pursuant to subsection 3(1)(b) of LA FOIP. The Commissioner recommended release of those records. The Commissioner found that subsections 14(1)(c) of LA FOIP applied to the remainder of the withheld records. The Commissioner recommended the RPS continue to withhold those records pursuant to subsections 14(1)(c) of LA FOIP.

I BACKGROUND

[1] On February 9, 2024, the Regina Police Service (RPS) received the following access to information request:

Please provide all documents, correspondence and evidence collected regarding the criminal investigation into [Name of MLA]

[2] The Applicant specified the time period for the requested records to be November 15, 2023 to the present.

[3] On March 11, 2024, the RPS responded to the Applicant. The RPS provided the Applicant access to 19 pages, in full. But it withheld 17 pages, in full, pursuant to subsections 14(1)(c)

and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[4] On March 13, 2024, the Applicant requested that my office review RPS' decision to withhold the 17 pages. The following day, the Applicant indicated to my office that they "believe that these records are in the public interest."

[5] On April 5, 2024, my office notified both the Applicant and RPS that my office would be undertaking a review.

[6] On June 5, 2024, my office received a submission from RPS.

[7] My office did not receive a submission from the Applicant.

II RECORDS AT ISSUE

[8] There are 17 pages of records at issue that RPS has withheld, in full, pursuant to subsections 14(1)(c) and 28(1) of LA FOIP as follows:

- Pages 1 and 2 are a case summary.
- Pages 3 to 5 contain a general report and a supplementary occurrence report.
- Pages 6 to 13 are copies of pages of an officer's notebook.
- Pages 14 to 17 are forms filed with the Provincial Court of Saskatchewan.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[9] RPS qualifies as a "local authority" as defined by subsection 2(1)(f)(viii.1) of LA FOIP. Therefore, I find that I have jurisdiction to conduct this review.

2. Does LA FOIP apply to pages 14 to 17?

[10] Pages 14 to 17 of the records at issue are signed Forms 2 and 10 prescribed in the *Criminal Code*. They appear to be forms that would have been filed with the provincial court as Form 2 was signed by a Justice of the Peace and the Form 10 provides the date and time of the third party's court appearance at Provincial Court. These forms would be a matter of public record. Subsection 3(1)(b) of LA FOIP provides:

3(1) This Act does not apply to:

...

(b) material that is a matter of public record;

[11] I find that LA FOIP does not apply to pages 14 to 17 of the records at issue pursuant to subsection 3(1)(b) of LA FOIP. I recommend that RPS release these pages to the Applicant. For the remainder of this Report, I will consider pages 1 to 13 of the records at issue.

3. Did the RPS properly apply subsection 14(1)(c) of LA FOIP?

[12] RPS applied subsection 14(1)(c) of LA FOIP to pages 1 to 13 of the records at issue. Subsection 14(1)(c) of LA FOIP provides:

14(1) A head may refuse to give access to a record, the release of which could:

...

(c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

[13] My office uses the following two-part test to determine if subsection 14(1)(c) of LA FOIP applies:

1. Does the local authority's activity qualify as a "lawful investigation"?
2. Does one of the following exist?
 - a. Could release of the information interfere with a lawful investigation?
 - b. Could release disclose information with respect to a lawful investigation?

(*Guide to LA FOIP*, Chapter 4, “Exemptions from the Right of Access,” updated October 18, 2023 [*Guide to LA FOIP*, Ch. 4] at pp. 54-56)

[14] Below is an analysis to determine if the two-part test is met.

1. Does the local authority’s activity qualify as a “lawful investigation”?

[15] A “lawful investigation” is an investigation that is authorized or required and permitted by law. The local authority should identify the legislation under which the investigation is occurring. The investigation can be concluded, active and ongoing or be occurring in the future (*Guide to LA FOIP*, Ch. 4, p. 54).

[16] In its submission, RPS said that members of its Vice Unit were engaged in a project aimed at combating sexual exploitation and human trafficking. The project resulted in 16 individuals being arrested and charged with procuring sexual services for consideration, contrary to section 286.1 of the *Criminal Code*. RPS also noted that subsection 36(2) of *The Police Act, 1990*, provides a member of a police service certain powers and responsibilities, including the prevention of crime and offenses against the laws in force in the municipality.

[17] Based on a review of pages 1 to 13 of the record and RPS’ description, it appears that I am dealing with a “lawful investigation”. The first part of the two-part test is met.

2. Does one of the following exist?

a. Could release of the information interfere with a lawful investigation?

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

[18] Section 14 of LA FOIP uses the word “could” versus “could reasonably be expected to” as seen in other provisions of LA FOIP. The threshold for could is somewhat lower than a reasonable expectation. The requirement for could is simply that the release of the information could have the specified result. There would still have to be a basis for

asserting the harm could occur. If it is fanciful or exceedingly remote, the exemption should not be invoked (*Guide to LA FOIP*, Ch. 4, p. 54).

[19] “Interfere with” includes hindering or hampering an investigation and anything that would detract from an investigator’s ability to pursue the investigation (*Guide to LA FOIP*, Ch. 4, p. 54).

[20] In its submission, RPS said:

Sharing this information could reasonably be expected to hinder or hamper the investigation because information shared could lead to false and or misinformation. Additionally, sharing information with respect to the investigation could lead to interference with ongoing or planned police operations in the future.

[21] Based on a review, the contents of pages 1 to 13 include a description of the method and techniques used by the RPS for its investigation. The disclosure of such information could interfere with the ability of RPS to conduct similar investigations in the future. The second part of the two-part test is met. I find that subsection 14(1)(c) of LA FOIP applies to pages 1 to 13 of the records at issue.

[22] Although I have found that subsection 14(1)(c) of LA FOIP applies to pages 1 to 13 of the records at issue, I note the Applicant has asserted that the information in the records is in the “public interest”. There is no public interest override provision in LA FOIP that relates to subsection 14(1)(c) of LA FOIP. I recommend that RPS continue to withhold pages 1 to 13 of the records at issue. Since subsection 14(1)(c) of LA FOIP applies to the records, there is no need for me to consider subsection 28(1) of LA FOIP.

IV FINDINGS

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

[24] I find that LA FOIP does not apply to pages 14 to 17 of the records at issue pursuant to subsection 3(1)(b) of LA FOIP.

[25] I find that subsection 14(1)(c) of LA FOIP applies to pages 1 to 13 of the records at issue.

V RECOMMENDATIONS

[26] I recommend that RPS release pages 14 to 17 of the records at issue to the Applicant.

[27] I recommend that RPS continue to withhold pages 1 to 13 of the records at issue pursuant to subsection 14(1)(c) of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 7th day of June, 2024.

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