



REVIEW REPORT 077-2023

Saskatoon Police Service

November 8, 2023

Summary:

The Applicant made an access to information request to the Saskatoon Police Service (SPS). SPS partially denied access to certain records pursuant to subsections 14(1)(c), (j) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). SPS also informed the Applicant that it was refusing to confirm or deny the existence of any additional records responsive to the Applicant's access request, pursuant to subsection 7(4) of LA FOIP. The Applicant was not satisfied with SPS' response and requested the Commissioner review its response timeframe and the exemptions it applied. The Commissioner found that SPS did not comply with section 7 of LA FOIP and recommended that SPS ensures it takes steps to be compliant with section 7 of LA FOIP in the future. The Commissioner also found that SPS properly applied subsections 14(1)(c), (j) and 28(1) of LA FOIP and recommended that SPS continue to withhold the record accordingly. Finally, the Commissioner found SPS could rely on section 7(4) of LA FOIP and recommended SPS take no further action.

I BACKGROUND

[1] On March 7, 2022, Saskatoon Police Service (SPS) received the Applicant's access to information request that stated:

I would like to know how many times my name was run in computer and why, by who and info under the freedom of information act.

[2] On March 8, 2022, SPS contacted the Applicant to clarify their access request and the Applicant revised their access request via telephone as follows:

I would like to know how many times my name was run in computer and why, by who and info under the freedom of information act.

- An audit of any time my name was searched in the police database for the timeframe of December 1, 2019 to the present (March 8, 2022); and
- Copies of reports and investigations where my name is listed for the same timeframe December 1, 2019 to the present (March 8, 2022).

[3] On August 18, 2022, SPS responded to the Applicant denying access to the records pursuant to subsections 14(1)(c), (j) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). SPS also informed the Applicant that it was refusing to confirm or deny the existence of any additional records responsive to the Applicant's access request, pursuant to subsections 7(2)(f) and 7(4) of LA FOIP.

[4] On March 23, 2023, my office received a request for review from the Applicant regarding SPS' response timeframe and the exemptions cited by SPS and its decision to confirm or deny existence of additional records responsive to the Applicant's access request.

[5] On April 25, 2023, my office provided notification to the Applicant and SPS of my office's intention to undertake a review.

[6] On June 26, 2023, SPS provided its submission to my office. The Applicant did not provide a submission to my office.

II RECORDS AT ISSUE

[7] The record at issue includes 31 pages of five documents titled, "call for service", "contact interview", "general occurrence". SPS withheld these pages in part, pursuant to subsections 14(1)(c), (j) and 28(1) of LA FOIP. SPS also informed the Applicant that it was refusing to confirm or deny the existence of any additional records responsive to the Applicant's access request, pursuant to subsections 7(2)(f) and 7(4) of LA FOIP, but if they did, SPS indicated that subsections 14(1)(c), (j), (k), 28(1) and section 20 of LA FOIP would apply.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[8] SPS qualifies as a “local authority” pursuant to subsection 2(1)(f)(viii.1) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did SPS comply with section 7 of LA FOIP?

[9] Subsection 7(2) of LA FOIP provides that within 30 calendar days of receiving an access request, the head of the local authority must provide a response to the applicant. Subsection 7(2) of LA FOIP provides, in part:

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

[10] SPS received the Applicant’s revised access request on March 8, 2023. SPS’ time to respond pursuant to subsection 7(2) of LA FOIP was April 7, 2023. If SPS intended to extend its timeline to respond, it needed to do so within the first 30 days or by April 7, 2023 pursuant to subsection 12(2) of LA FOIP. SPS eventually provided its response to the Applicant on August 18, 2023, which was well beyond the legislated timeframe to respond. I find, therefore, that SPS did not comply with section 7 of LA FOIP.

[11] In its submission to my office, SPS agreed that it did not meet its duty to respond to this access request in the legislated timelines. SPS stated that it will take steps to ensure timelines are met in the future. I recommend that SPS ensures it takes these steps.

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

[12] SPS applied subsection 14(1)(c) of LA FOIP to pages 3, 7, 9, 10, 12 to 15 and 27 to 30 of the record withheld in part from the Applicant. These pages contain “call summaries” and “general occurrence reports” from various dates.

[13] 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.

[14] Subsection 14(1)(c) of LA FOIP is a discretionary class-based and harm-based exemption. Meaning it contains both a class and harm-based component. It permits refusal of access in situations where the release of a record could interfere with a lawful investigation or disclose information with respect to a lawful investigation. The following two-part test can be applied:

1. Does the local authority's activity qualify as a "lawful investigation"?
2. Does one of the following exist?
 - a) Could release of the following 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 April 29, 2021 [*Guide to LA FOIP*, Ch. 4], pp. 52-54).

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. It is not limited to investigations that are conducted by a local authority. In other words, it can include investigations conducted by other organizations (e.g., a police investigation) (*Guide to LA FOIP*, Ch. 4, p. 52).

[16] In its submission to my office, SPS explained that section 36(2) of *The Police Act, 1990*, provide it with the authority to conduct lawful investigations and enforce respective laws.

SPS further stated the records relate to calls for service that, if charges were laid, could result in charges under the *Criminal Code*.

[17] In my office’s [Review Reports 210-2022](#), [245-2022](#) and [040-2023](#), I continued with the approach that police investigations into possible violations of the *Criminal Code* qualify as lawful investigations. Following the same approach here, and upon review of the record at hand, I agree that a lawful investigation was involved. Therefore, the first part of the test for subsection 14(1)(c) of LA FOIP is met and I will consider the second part.

2. Does one of the following exist?

...

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

[18] In its submission, SPS has submitted that release “could disclose information with respect to a lawful investigation”. SPS stated as follows:

...The information withheld pursuant to subsection 14(1)(c) includes the following, but not limited to, information:

- Statements provided to police by various individuals;
- Evidence provided to police to support a complaint of uttered threats;
- Notes to file that are investigative in nature;
- Queries made by police in the MDT [mobile data terminal] during their investigations, which include personal information of third parties; and
- Investigative steps taken by officers.

Disclosure of the information withheld pursuant to subsection 14(1)(c) would disclose information that was provided to police in confidence to police, and would reveal evidence that informed the investigation and the decision not to lay charges...

[19] 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. 52).

- [20] It is only necessary for the local authority to demonstrate that the information in the record is information with respect to a lawful investigation to meet this part of the test (*Guide to LA FOIP*, Ch. 4, p. 53).
- [21] “With respect to” are words of the widest possible scope; the phrase is probably the widest of any expression intended to convey some connection between two related subject matters (*Guide to LA FOIP*, Ch. 4, p. 53).
- [22] In my office’s [Review Report 202-2018](#) and [210-2022](#), I concluded that for subsection 14(1)(c) of LA FOIP to be applicable, an investigation can be concluded, active and ongoing, or be occurring in the future. In this matter, there are multiple service calls, incidents and individuals involved that SPS is investigating and it stated that there is potential for future charges. As such, release of the record could disclose information with respect to a lawful investigation. I am satisfied that the second part of the test is met for subsection 14(1)(c) of LA FOIP for these records.
- [23] As such, I find that SPS properly applied subsection 14(1)(c) of LA FOIP to the records as described at paragraph [13] of this Report. I recommend SPS continue to withhold this information pursuant to subsection 14(1)(c) of LA FOIP.

4. Did SPS properly apply subsection 14(1)(j) of LA FOIP?

- [24] SPS applied subsection 14(1)(j) of LA FOIP to pages 4 and 16. These pages contain call summaries and general occurrence reports from various dates.
- [25] Subsection 14(1)(j) of LA FOIP provides:

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

...

(j) facilitate the commission of an offence or tend to impede the detection of an offence;

[26] Subsection 14(1)(j) of LA FOIP is a discretionary harm-based exemption. It permits refusal of access in situations where the release of a record could facilitate the commission of an offence or impedes the detection of one. The following two-part test can be applied:

1. Could release of the record facilitate the commission of an offence?
2. Could release of the record tend to impede the detection of an offence?

(Guide to LA FOIP, Ch. 4, pp. 71-74)

[27] In its submission to my office, SPS stated that subsection 14(1)(j) of LA FOIP was used to withhold “dispatch codes” or “ten codes” on these pages of the record. SPS further explained the following:

The use of ten-codes by law enforcement personnel is used as a means of communication that conveys a specific message without publicly identifying its true meaning. In Saskatchewan, each police service maintains an individual list of ten-codes only used by one specific police service, with the exception of standardized ten-codes such as 10-4 (understood/message received).

[28] In my office’s Review Reports [037-2018](#), [023-2019](#), [098-2019](#) and [353-2019](#), also concerning SPS, my office found that the disclosure of “ten codes” could facilitate the commission of an offence. As such, I will take the same approach in this matter and find that SPS properly applied subsection 14(1)(j) of LA FOIP where it applied it on pages 4 and 16. I recommend that SPS continue to withhold the “ten codes” on pages 4 and 16 of the record pursuant to subsection 14(1)(j) of LA FOIP.

5. Did SPS properly apply subsection 28(1) of LA FOIP?

[29] SPS applied subsection 28(1) of LA FOIP to some of the portions of the record where I have found it properly applied subsection 14(1)(c) and 14(1)(j) of LA FOIP. As such, I will only review the portions of the record where SPS applied subsection 28(1) of LA FOIP on its own, which are pages 1, 2, 6, 8, 18 to 21, and 23 to 26.

[30] 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.

[31] Section 28 of LA FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains, consents to its disclosure or if the disclosure without consent is authorized by one of the enumerated subsections of 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).

[32] Section 28 of LA FOIP only applies to personal information as defined by section 23 of LA FOIP (*Guide to LA FOIP*, Ch. 6, p. 163).

[33] In its submission to my office, SPS listed the following data elements of individuals, other than the Applicant, present in the pages where it applied subsection 28(1) of LA FOIP:

- Name;
- Date of birth;
- Sex;
- Address;
- Phone number;
- Ethnicity;
- Email address;
- Personal health information; and
- Details of individuals’ contact with the SPS regarding the investigations.

[34] Upon review of the record, my office noted that all these data elements were present in these pages and the information belonged to individuals other than the Applicant. This would be their personal information as defined by subsections 23(1)(a), (c), (e), (f), (h), (k)(i) and (ii) of LA FOIP, which provide as follows:

23(1) Subject to sections (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;

...
(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;

...
(h) the views or opinions of another individual with respect to the 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.

[35] As such, I find that SPS properly applied subsection 28(1) of LA FOIP to the portions of the record on pages 1, 2, 6, 8, 18 to 21, and 23 to 26. I recommend SPS continue to withhold the portions of these pages pursuant to subsection 28(1) of LA FOIP.

6. Can the SPS rely on subsection 7(4) of LA FOIP?

[36] 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 May 5, 2023 [*Guide to LA FOIP*, Ch. 3], pp. 58-59).

[37] Subsection 7(4) of LA FOIP provides:

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.

[38] Subsection 7(4) of LA FOIP provides that where a local authority intends to respond to an applicant citing subsection 7(2)(f) of FOIP, it can only do so for records that would be exempt from disclosure pursuant to sections 14, 20 or 21 or subsection 28(1) of LA FOIP (*Guide to LA FOIP*, Ch. 3, p. 60).

[39] By invoking subsection 7(4) of FOIP, a local authority is denying an applicant the right to know whether a record exists. This subsection 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 in itself impose significant risk. For example, the risk of harm to witnesses as a result 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, pp. 60-61).

[40] In this case, SPS explained that if a record was to exist, it would rely on subsections 14(1)(c), (j), (k), 28(1) and section 20 of LA FOIP to deny access. These all fall within the scope of subsection 7(4) of LA FOIP.

[41] In this Report, I previously discussed subsections 14(1)(c), (j) and 28(1) of LA FOIP and the tests that can be used to determine if they apply. This leaves me with subsection 14(1)(k) and section 20 of LA FOIP to discuss.

[42] Subsection 14(1)(k) of LA FOIP provides:

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

...

(k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

[43] Subsection 14(1)(k) of LA FOIP is a discretionary exemption that contains both a class and harm-based component. It permits refusal of access in situations where release of a record could interfere with a law enforcement matter or disclose information respecting a law enforcement matter (*Guide to LA FOIP*, Ch. 3, p. 74). The following two-part test can be applied:

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

(*Guide to LA FOIP*, Ch. 4, pp. 71-74)

[44] Section 20 of LA FOIP provides:

20 A head may refuse to give access to a record if the disclosure could threaten the safety or the physical or mental health of an individual.

[45] Section 20 of LA FOIP is a discretionary, harm-based exemption. It permits refusal of access in situations where disclosure of a record could threaten the safety or the physical or mental health of an individual. Every jurisdiction in Canada (except Quebec) has a similarly worded provision as Saskatchewan's section 20 of LA FOIP. However, the thresholds for every other jurisdiction are higher and use the "could reasonably be expected" threshold. No other jurisdiction in Canada has the same lower threshold as Saskatchewan's section 20 (*Guide to LA FOIP*, Ch. 3, p. 214). The following test can be applied:

- ***Could disclosure of the record threaten the safety or the physical or mental health of an individual?***

(*Guide to LA FOIP*, Ch. 4, p. 215)

[46] For section 20 of LA FOIP, the question that must be answered is could disclosure of the record threaten the safety or the physical or mental health of an individual? The threshold for "could" is somewhat lower than a reasonable expectation. On the threshold, speculation

is at one end and probable (or “could reasonably be expected”) is at the other. The middle ground for “could” therefore, is that which is possible (*Guide to LA FOIP*, Ch. 3, p. 215).

[47] In my office’s [Review Report 237-2021](#), I took the approach of not indicating if a record exists given the nature of subsection 7(4) of LA FOIP. Based on SPS’ submission, I am satisfied that if records responsive to the Applicant’s access to information request existed, they would all be exempt from release pursuant to subsections 14(1)(c), (j), (k), 28(1) and section 20 of LA FOIP.

[48] I find, therefore, SPS can rely on subsection 7(4) of LA FOIP and recommend it take no further action.

IV FINDINGS

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

[50] I find that SPS did not comply with section 7 of LA FOIP.

[51] I find that SPS properly applied subsection 14(1)(c) of LA FOIP to the record that it withheld in part from the Applicant.

[52] I find that SPS properly applied subsection 14(1)(j) of LA FOIP to the record that it withheld in part from the Applicant.

[53] I find that SPS properly applied subsection 28(1) of LA FOIP to the record that it withheld in part from the Applicant.

[54] I find that SPS can rely on subsection 7(4) of LA FOIP.

V RECOMMENDATIONS

[55] I recommend that SPS ensure it takes steps to be compliant with section 7 of LA FOIP in the future.

[56] I recommend that SPS continue to withhold information where it applied subsection 14(1)(c) of LA FOIP.

[57] I recommend that SPS continue to withhold information where it applied subsection 14(1)(j) of LA FOIP.

[58] I recommend that SPS continue to withhold information where it applied subsection 28(1) of LA FOIP.

[59] I recommend that SPS take no further action regarding subsection 7(4) of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 8th day of November, 2023.

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