



REVIEW REPORT 095-2023

City of Saskatoon

September 14, 2023

Summary:

The Applicant made an access to information request to the City of Saskatoon (City). The City responded and indicated it was withholding portions of the records pursuant to subsections 14(1)(e), (m), 16(1)(a), (b), 21(b), (c) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). It also stated that some records did not exist. The Applicant asked the Commissioner to review the decision and the City's search for records. The Commissioner found that exceptional circumstances existed to support the consideration of the City's claim to section 20 of LA FOIP even though it was not set out in the City's section 7 decision. He also found that the City properly applied exemptions to some information but not all. In addition, he found that the City had conducted a reasonable search for records. The Commissioner recommended that the City take no further action with respect to the search for records. He also recommended that the City continue to withhold information where the exemptions had been properly applied and, within 30 days of issuance of this Report, release information where the exemptions had not been properly applied.

I BACKGROUND

[1] The City of Saskatoon (City) received an access to information request from the Applicant on March 6, 2023. The Applicant sought access to the following information:

Part 1 - records for the period between 2018 and today's date related to the following:

- “complaints or enforcement or removal action relating to The Poster Bylaw 7565 and an unknown person” · “complaints or enforcement or removal action relating to the content of posters”

- “any statistics relating to posters and The Poster Bylaw in Saskatoon” – For example how many charges for violations per section per year, acquittal/stay/conviction rates, budget related to maintenance or repair of poster drums, budget of the City for poster advertising, any general quantifiable information), or if such records are unduly expansive in scope then alternately information relating to the type of statistical information, if any, that the City collects, so as to facilitate search

Part 2 - “records regarding the Saskatoon Fire Department and any associated entities relating to me or my residences between 2018 and the time this request is processed”

Part 3 - “complaint or inspection conducted in December of 2019 at my former address [redacted], between 2018 and January 2020.”

[2] Following communications between the Applicant and the City, the Applicant clarified the access to information request as follows:

Part 1 complaints or enforcement or removal action relating to The Poster Bylaw 7565 and an unknown person, and,

Part 2 complaints or enforcement or removal action relating to the content of posters (I'm not interested in personal information, and I understand such information should be redacted from responsive records so that non-personal information can be disclosed), and,

Part 3 any statistics relating to posters and The Poster Bylaw in Saskatoon (such as how many charges for violations per section per year, acquittal/stay/conviction rates, budget related to maintenance or repair of poster drums, budget of the City for poster advertising, any general quantifiable information), or if such records are unduly expansive in scope then alternately information relating to the type of statistical information, if any, that the City collects, so as to facilitate search between 2018 and the time this request is processed, in possession of the City's,

- 1) statistical entities, and,
- 2) bylaw enforcement agencies, or agencies that enforce The Poster Bylaw, and,
- 3) the City Solicitor's Office, and,
- 4) any entity that acts in relation to posters, but excluding,
 - 1) the Saskatoon Police Service, and
 - 2) City Council and any purely legislative entities (meaning action not specific to the facts requested above), and,
 - 3) the various Business Improvement Districts, and,
 - 4) City Hall security services.

Also I request records regarding the Saskatoon Fire Department and any associated entities relating to me or my residences between 2018 and the time this request is processed. I have reason to believe records may exist during this time in relation to,

- 1) my former address [redacted] up until June of 2018, and,
- 2) complaint or inspection conducted in December of 2019 at my former address [redacted], between 2018 and January 2020.

I spoke with [name redacted] about my request, [they were] helpful and directed me to submit this clarification of my previous request of today's date, which can be discarded in preference of this one accompanied by the mandatory \$20 fee.”

- [3] On March 30, 2023, the City sent its section 7 decision to the Applicant. The City stated that it was withholding portions of records pursuant to subsections 14(1)(e), (m), 16(1)(a), (b), 21(b), (c) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). With respect to the request for “statistics relating to posters,” the decision stated that no records exist.
- [4] The City’s section 7 decision did not state that it was applying section 20 of LA FOIP. However, in the redacted versions of the records provided to the Applicant at the same time, it did set out the claim to that exemption.
- [5] On April 8, 2023, my office received a request for review from the Applicant disputing the City’s authority to withhold records and portions of records and stating that the City’s search was not adequate.
- [6] On May 3, 2023, my office notified the City and the Applicant that it would be conducting a review.
- [7] Section 2-4 to my office’s [*Rules of Procedure*](#) (effective December 1, 2018, revised December 8, 2022) states that discretionary exemptions, not included in the head’s decision under LA FOIP, will not be considered by my office during a review unless there are exceptional circumstances.

[8] As noted above, the City failed to include a reference to section 20 of LA FOIP in its decision. It asserted that its failure to claim the discretionary exemption was an oversight. Given the reference to section 20 of LA FOIP in the redacted versions of the records provided to the Applicant and based on the information outlined in the City’s submission and other correspondence with my office, I am satisfied that there are exceptional circumstances here and have decided to consider the application of section 20 of LA FOIP in this review.

II RECORDS AT ISSUE

[9] The City identified 219 pages of responsive records. It released 175 records in full and withheld portions of 44 pages of records. Appendix A to this Report describes the records at issue, the portions withheld, and the exemptions applied by the City.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[10] The City qualifies as a “local authority” as defined by subsection 2(1)(f)(i) of LA FOIP. Therefore, I find that I have jurisdiction to undertake this review.

2. Did the City conduct a reasonable search for records?

[11] 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 (*Guide to LA FOIP*, Chapter 3, “Access to Records”, updated: May 5, 2023 [*Guide to LA FOIP*, Ch. 3], p. 12).

[12] Before I turn to consider the City’s search, I note that its decision stated that no responsive records existed in relation to the request for “statistics relating to posters.” However, the City’s section 7 decision did not cite subsection 7(2)(e) of LA FOIP.

[13] Subsection 7(2)(e) of LA FOIP provides that where a local authority determines the record requested does not exist, it must indicate that in its section 7 decision. Previous reports of my office, such as my office’s [Review Report 167-2022](#), have found that local authorities are also required to cite which subclause from subsection 7(2) of LA FOIP they are relying on.

[14] Subsection 7(2)(e) of LA FOIP states:

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

...

(e) stating that access is refused for the reason the record does not exist.

[15] The City acknowledged that it failed to cite this provision and stated that it will ensure that this provision is properly noted in all future decisions.

[16] Turning to the City’s search, the focus of my office’s review of a search is on whether the local authority conducted a reasonable search. 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. A “reasonable effort” is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances (*Guide to LA FOIP*, Ch. 3, p. 14).

[17] During a search review, the local authority should provide my office with detailed information about its efforts to conduct a search. The following examples of the type of information that can be provided to my office are relevant here:

- For personal information requests – explain how the individual is involved with the local authority (i.e., client, employee, former employee etc.) and why certain departments/divisions/branches/committees/boards were included in the search.
- 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*](#), available on my office’s website.

(*Guide to LA FOIP*, Ch. 3, pp. 14-15)

[18] In support of its claim that it’s search was reasonable, the City asserted that:

- Its “call for records” was sent to the Executive Leadership Team (ELT) across all City departments. The ELT were responsible for identifying the business unit leaders to carry out the searches.

- The business units that carried out the searches were Bylaw Enforcement, City Solicitors' Office (CSO), Transportation, Corporate Security Manager, Facilities Management and Saskatoon Fire Department (SFD).
- The searches covered the period of time from 2018 to March 6, 2023 for records relating to the Applicant and multi-residences and between 2018 and January 2020 for information about the Applicant.
- The searches involved a search of electronic records except in the case of the CSO, the only unit that maintains paper records, where paper records were also searched.
- Some screen shots of examples of the key word searches carried out by SFD and CSO were provided to my office.

[19] With respect to the claim that no statistical records about posters existed, the City asserted that the Applicant limited the scope of the request by excluding certain City departments. It also asserted that the Applicant refused a partial transfer of the request to other local authorities, such as the Saskatoon Police Services and Saskatoon Downtown Business Improvement District.

[20] I stated in my office's [Review Report 159-2019](#) and [Review Report 118-2020](#), "it is the applicant who sets the parameters of the access request, so that the trustee is able to conduct an adequate search for records." In this matter, according to the information available to me, the Applicant limited the scope of the request, which in turn limited the scope of the City's search efforts.

[21] The City's submission did not set out the dates and times that the searches were conducted. However, it did provide my office with copies of some email correspondence between City staff requesting the searches and the staff responsible for the searches. I note that the searches appeared to engage subject matter experts, involved multiple and appropriate repositories and included the use of appropriate keywords.

[22] Based on the information provided by the City, I find that it conducted a reasonable search for records. I recommend that the City take no further actions regarding the search.

3. Did the City properly apply subsection 21(b) of LA FOIP?

[23] The City applied the discretionary exemption in subsection 21(b) of LA FOIP to portions of email records at pages 15 (and its duplicate at page 18), 62, 175, 179 and 180.

[24] Subsection 21(b) of LA FOIP permits refusal of access in situations where a record was prepared by or for legal counsel for a local authority in relation to the provision of advice or services by legal counsel (*Guide to LA FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 29, 2021 [*Guide to LA FOIP*, Ch. 4], p. 237). The provision states:

21 A head may refuse to give access to a record that:

...

(b) was prepared by or for legal counsel for the local authority in relation to a matter involving the provision of advice or other services by legal counsel;

[25] The two-part test for subsection 21(b) of LA FOIP, which can be found in my office’s *Guide to LA FOIP*, Ch. 4, at page 237, is as follows:

1. Were the records “prepared by or for” legal counsel for a local authority?
2. Were the records prepared in relation to a matter involving the provision of advice or other services by legal counsel?

[26] I now turn to consider if the two-part test has been met in this case.

1. Were the records “prepared by or for” legal counsel for a local authority?

[27] The record must be “prepared”, as the term is understood, in relation to the advice or services or compiled or created for the purpose of providing the advice or services. “Prepared” means to be ready for use or consideration. “By or for” means the person preparing the record must be either the person providing the legal advice or legal service or a person who is preparing the record in question on behalf of, or for the use of, the provider of legal advice or legal-related services (*Guide to LA FOIP*, Ch. 4, p. 237).

[28] Page 15 is an email from the City solicitor to a bylaw enforcement officer. Pages 62 and 175 are email exchanges between City solicitors. On pages 179 and 180 is an email from a City solicitor to the Saskatoon Police. Therefore, these records all involve emails prepared by legal counsel for the City and part one of the test has been met.

2. Were the records prepared in relation to a matter involving the provision of advice or other services by legal counsel?

[29] “In relation to” has been found to have a similar meaning as “in respect of” which was considered in *Nowegijick v. The Queen*, [1983] 1 SCR 29, 1983 CanLII 18 (SCC) at [39]. The Supreme Court of Canada stated:

The words “in respect of” are, in my opinion, words of the widest possible scope. They import such meanings as “in relation to”, “with reference to” or “in connection with”. The phrase “in respect of” is probably the widest of any expression intended to convey some connection between two related subject-matters.

(Guide to LA FOIP, Ch. 4, pp. 237-238)

[30] “Legal advice” includes a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications. “Legal service” includes any law-related service performed by a person engaged by the local authority and who is licensed to practice law (*Guide to FOIP, Ch. 4, p. 238*).

[31] Upon review of the records, I am satisfied that the information withheld from pages 15 (and its duplicate), 62, 175, 179 and 180 was prepared in relation to matters involving the provision of advice or services by the City’s legal counsel. Therefore, part two of the test has been met.

[32] Accordingly, I find that the City properly applied subsection 21(b) of LA FOIP to the six email records. I recommend that the City continue to withhold this information.

[33] Given my findings, I do not need to consider if the City properly applied subsection 21(c) of LA FOIP to the same information.

4. Did the City properly apply subsection 16(1)(b) of LA FOIP?

[34] The City applied subsection 16(1)(b) of LA FOIP to page 17. This provision states:

16(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) consultations or deliberations involving officers or employees of the local authority;

[35] My office uses the following two-part test to determine if subsection 16(1)(b) of LA FOIP applies:

1. Does the record contain consultations or deliberations?
2. Do the consultations or deliberations involve officers or employees of the local authority?

(*Guide to LA FOIP*, Ch. 4, pp. 113-114).

[36] Following is an analysis to determine if the two-part test has been met.

1. Does the record contain consultations or deliberations?

[37] The City asserted that the withheld information qualifies as a deliberation on a matter for which the bylaw officer requires advice from the solicitor.

[38] “Deliberation” means to weigh in mind; to consider carefully with a view to a decision; to think over; careful consideration with a view to a decision. The consideration and discussions of the reasons for and against a measure by a number of councillors. A deliberation can occur when there is a discussion or consideration of the reasons for or against an action. It can refer to discussions conducted with a view towards making a decision (*Guide to LA FOIP*, Ch. 4, pp. 113-114).

[39] It is apparent from a review of the withheld information that the bylaw officer initiated a discussion with the City solicitor to obtain advice on how to manage a bylaw related matter. The withheld information describes the issues and challenges associated with the enforcement of a bylaw. I find that this qualifies as a “deliberation.”

2. Do the consultations or deliberations involve officers or employees of the local authority?

[40] “Involving” means including. “Officers or employees of a local authority” means an individual employed by a local authority and includes an individual retained under a contract to perform services for the local authority (*Guide to LA FOIP*, Ch. 4, p. 114).

[41] I note that the deliberations involve officers or employees of the City. Therefore, the second part of the test has been met. I find that the City properly applied subsection 16(1)(b) of LA FOIP to page 17. I recommend that it continue to withhold this information.

5. Did the City properly apply subsection 14(1)(e) of LA FOIP?

[42] The City applied subsection 14(1)(e) of LA FOIP to portions of Internal Security Reports. Subsection 14(1)(e) of LA FOIP states:

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

...

(e) reveal investigative techniques or procedures currently in use or likely to be used;

[43] Subsection 14(1)(e) of LA FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reveal investigative techniques or procedures currently in use or likely to be used. Subsection 14(1)(e) of LA FOIP recognizes that unrestricted access to law enforcement techniques could reduce their usefulness, effectiveness and success (*Guide to LA FOIP*, Ch. 4, p. 57).

[44] My office uses the following three-part test to determine if the exemption applies:

1. Does the information in question constitute “investigative techniques” or “procedures”?
2. Are the investigative techniques and/or procedures currently in use or likely to be used?
3. Could disclosure reveal investigative techniques or procedures?

(Guide to LA FOIP, Ch. 4, p. 58)

[45] I will begin with an analysis of the first part of the test.

1. Does the information in question constitute “investigative techniques” or “procedures”?

[46] “Investigative techniques and procedures” means techniques and procedures used to conduct an investigation or inquiry for the purpose of law enforcement. The techniques or procedures must include specific steps. General information (such as forms and standard policies that do not include specific investigative steps and procedures) would not qualify. Routine, common or customary investigative techniques and procedures would not qualify. It does not include well known investigative techniques, such as wiretapping, fingerprinting and standard sources of information about individuals’ addresses, personal liabilities, real property, etc. *(Guide to LA FOIP, Ch. 4, p. 58)*.

[47] The City applied subsection 14(1)(e) of LA FOIP to information about actions taken by its security department from page 1 of the reports. From page 2, it withheld the sections which describe the people and motor vehicles involved in the incident. In many cases., large portions of page 2 were blank. It also withheld information about internal reviews of the incident such as the review status, dates of review, and general comments about how the incident was being managed.

[48] The City asserted that the severances were appropriate for the following reasons:

The redacted portion of the security report is severed to protect the integrity of the City of Saskatoon’s security investigation processes. This portion of the forms that have been redacted include the involvement and description of people involved in the incident, supports received and internal review. All of the investigation techniques

outlined are currently in use at the City of Saskatoon and if revealed would disclose the investigation techniques employed by the City of Saskatoon Security office. Disclosing filled-in investigation forms can potentially reveal security procedures and techniques because the filled-in investigation forms contain specific details about security protocols, operational practices, or techniques used by security personnel. Disclosing such information could compromise the effectiveness of security measures by providing insights into vulnerabilities or potential weaknesses. The filled-in investigation forms also contain information about how information is collected, stored, or shared within a security system. By exposing this information, unauthorized individuals could gain insights into how the security system operates, potentially allowing them to exploit or circumvent it. Furthermore, analyzing filled-in investigation forms over time could reveal patterns or recurring vulnerabilities in security procedures. Unintended recipients could identify common practices or weaknesses, exploiting such knowledge, they could devise strategies to overcome security measures in place.

[49] I cannot reveal the contents of the City's Security Incident Reports. However, it is apparent that the City uses a template to document general and specific information about a security incident including the individuals involved, efforts made to respond to the incident and the final outcome. It appears to be similar to the type of record that would be generated for health and safety or other incident reporting and investigating in the workplace. The form and the text that populates portions of some of the forms do not reveal techniques or procedures that require training or specialized knowledge. The forms merely prompt the collection of information that one would normally expect in relation to these types of incidents.

[50] Section 51 of LA FOIP provides:

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.

[51] For the reasons outlined above, the City has not met its burden under section 51 of LA FOIP of establishing that the exemption applies. Accordingly, I find that the City did not properly apply subsection 14(1)(e) of LA FOIP.

[52] I recommend that, subject to my findings below regarding the application of section 20 of LA FOIP, within 30 days of issuance of this Report, the City release this information to the Applicant. The details are set out in Appendix A to this Report.

6. Did the City properly apply subsections 14(1)(m) of LA FOIP?

[53] The City applied subsection 14(1)(m) of LA FOIP to the internal file number assigned to the Security Incident Reports.

[54] Section 14(1)(m) of LA FOIP is a discretionary exemption. It permits refusal of access in situations where release of a record could reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems (*Guide to LA FOIP*, Ch. 4, p. 87).

[55] Subsection 14(1)(m) of LA FOIP states:

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

...

(m) reveal the security arrangements of particular vehicles, buildings or other structures or systems, including computer or communication systems, or methods employed to protect those vehicles, buildings, structures or systems.

[56] The following test is used by my office to determine if subsection 14(1)(m) of LA FOIP applies. Only one of the following questions needs to be answered in the affirmative for the exemption to apply.

1. Could release reveal security arrangements (of particular vehicles, buildings, other structures or systems)?
2. Could release reveal security methods employed to protect the particular vehicles, buildings, other structures or systems?

(*Guide to LA FOIP*, Ch. 4, p. 88)

[57] “Security” means a state of safety or physical integrity. The security of a building includes the safety of its inhabitants or occupants when they are present in it. Examples of information relating to security include methods of transporting or collecting cash in a transit system; plans for security systems in a building; patrol timetables or patterns for security personnel; and the access control mechanisms and configuration of a computer

system. “Method” means a mode of organizing, operating, or performing something (*Guide to LA FOIP*, Ch. 4, p. 88)

[58] I understand the City’s submission to be that it properly applied subsection 14(1)(m) of LA FOIP because it met part two of the test. It asserted:

The redacted portion of the record contains information that would reveal the method of organizing the internal security system of the City of Saskatoon. Only internal staff should have knowledge of the security numbers applied to particular cases in order to protect the integrity of the security system. This information is not statistical or general in nature but rather links a particular case to the security system data.

[59] I am not persuaded that release of the file number for each Security Incident Report would reveal the methods used to protect the security system data. Organizations use file numbers to organize the data that they collect, use, retain and disclose. Data file numbers do not normally serve as access control mechanisms used to gain access to the data in electronic data bases. Nor has the City suggested that is the purpose of the file numbers in this case.

[60] Like my findings above, I find that the City has not met the burden under section 51 of LA FOIP of establishing that subsection 14(1)(m) of LA FOIP applies. I find that the City did not properly apply subsection 14(1)(m) of LA FOIP. I recommend that the City release the withheld information to the Applicant as set out in Appendix A to this Report within 30 days of issuance of this Report.

7. Did the City properly apply subsection 28(1) of LA FOIP?

[61] The City applied subsection 28(1) of LA FOIP to the following information:

- names, telephone numbers, emails addresses, and mailing addresses of individuals who sent emails or letters of complaint to the City (pages 35, 36, 37, 38, 40 and 42),
- names of two individuals and their opinions and views (page 16),
- photographs of individuals that appear in posters (pages 27, 30, 34, 65, 66, 182 and 205),

- residential address associated with a business, and which appeared in a bylaw ticket and two summons directed at the business (pages 1, 2 and 3),
- name of individual and opinion of fire department staff about them (page 56), and
- email address and telephone number for a business (page 41).

[62] Subsection 28(1) of LA FOIP is a mandatory exemption that protects the privacy of individuals. It prohibits the disclosure of personal information unless the individual about whom the information pertains consents to its disclosure or the disclosure without consent is authorized by 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). Section 28(1) of LA FOIP provides:

28(1) No local authority shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 29.

[63] Subsection 23(1) of LA FOIP provides a list of examples of personal information. However, to qualify as personal information, the information must be about an identifiable individual and must be personal in nature (*Guide to LA FOIP*, Ch. 6, p. 39). The following subsections are relevant here:

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:

...

(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.

- [64] Individuals' names and contact details that appear in emails or letters of complaint appear in a personal context. This information qualifies as the individuals' personal information pursuant to subsections 23(1)(e) and (k)(i) of LA FOIP because it is identifiable, and it is personal in nature. This finding is consistent with my office's approach in previous reports, such as in my office's [Review Report 121-2021](#) where I found that the names, signatures, home addresses, email addresses and telephone numbers of individuals who submitted an ethics complaint qualified as personal information.
- [65] Individuals' names and their views and opinions that appear on page 16 also qualify as personal information pursuant to subsections 23(1)(f) and (k)(i) of LA FOIP.
- [66] Page 56 is a fire inspection report. It includes the name of an individual and the opinions of a fire department employee about them. This qualifies as this individual's personal information pursuant to subsections 23(1)(h) and (k) of LA FOIP.
- [67] As there is no suggestion that the individuals to whom the information in paragraphs [64] to [66] relates consented to the release of their personal information, I find that the City properly applied subsection 28(1) of LA FOIP to this information. I recommend that the City continue to withhold this personal information. The details are set out in Appendix A to this Report.
- [68] I note that on pages 27, 30, 34, 65, 66, 182 and 205, the withheld photographs of individuals appear in posters that were attached to poles in various outdoor spaces in the City. The City cited my office's [Review Report LA-2013-002](#) and asserted that the photographs are personal in nature. It added that as the City did not have proof of whether or not these photographs were published in the posters with consent, the City chose to redact the images to avoid any further breach of privacy.
- [69] My office's findings in Review Report LA-2013-002 were followed more recently in my office's [Review Report 147-2020](#), where I stated that even where a name or other identifying information is not associated with a photograph, an individual may still be identifiable from a photograph of them. Based on a review of the records, I find that the

individuals whose images appear in these posters are identifiable and therefore, they qualify as personal information.

[70] Given that the posters were found on publicly accessible streets in the City of Saskatoon, I will consider below if the exception in subsection 28(2)(p) of LA FOIP for publicly available information applies.

[71] Subsection 28(2)(p) of LA FOIP provides:

28(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

...
(p) if the information is publicly available, including information that is prescribed as publicly available;

[72] This provision is discretionary and permits a local authority to disclose personal information about an individual without consent if the information is publicly available. “Publicly available” means published material, material that is a matter of public record (for example, through a public registry). “Published material” is material that is made known to people in general, an advising of the public or making known of something to the public for a purpose. “Public record” is defined as a record that a government unit is required by law to keep, such as land deeds kept at a county courthouse. Public records are generally open to view by the public (*Guide to LA FOIP*, Ch. 6, p. 222).

[73] The local authority should assess how public the information really is. Factors such as the circumstances in which the information was released to the public or the media, when it was released, and how much information is properly in the public realm will be relevant.

[74] It is apparent the posters were available to be viewed on streets accessible to the public. However, the information was not available to members of the public to the same extent that a report on the internet or traditional media services would be available. Depending on the location of the posters and the length of time that they were posted, a limited number of individuals may have seen them. In these circumstances, I find that the images were not

publicly available as that term is used in subsection 28(2)(p) of LA FOIP and the exception permitting disclosure does not apply. Therefore, I find that the City properly applied subsection 28(1) of LA FOIP to the photographs.

[75] Regarding the address that appears on pages 1 to 3, the City asserted that it was unclear as to whether the address was for the business or an individual and for that reason it redacted the address information.

[76] The address appears in bylaw infraction notices and related summons issued against a named business. The address is listed as the address for service of the business. Given the business context in which the address appears, it qualifies as business related information and not personal information. I find that the City did not properly apply subsection 28(1) of LA FOIP to this information. I recommend that the City release it to the Applicant within 30 days of issuance of this Report.

[77] The City withheld a telephone number and email address from the image on page 41. The telephone number and email address are associated with a business or service. In addition, as of the date of release of this Report the contact information for the business was publicly available on the internet. This information reveals nothing of a personal nature about an individual. I find that the City did not properly apply subsection 28(1) of LA FOIP to this information. I recommend that the City release it to the Applicant within 30 days of issuance of this Report.

[78] I need not consider if the City properly applied subsection 16(1)(a) of LA FOIP to page 16 as I have found above that information qualifies as personal information and is exempt pursuant to subsection 28(1) of LA FOIP. I now turn to consider the City's application of subsection 20 of LA FOIP.

8. Did the City properly apply section 20 of LA FOIP?

[79] As noted above, the City applied section 20 of LA FOIP to withhold witnesses' names on pages 190 and 205 from two Internal Security Reports. The same names, along with their

contact details, appear on pages 191 and 206 (on the second page of the Internal Security Reports at issue). As I am dealing with concerns regarding the safety of individuals, my findings below also consider the application of section 20 of LA FOIP to the names and contact details on those pages.

[80] 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 (*Guide to LA FOIP*, Ch. 4, p. 214). The section states:

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.

[81] The exemption applies in circumstances where the disclosure of the record threatens the safety or the physical or mental health of an individual (*Guide to LA FOIP*, Ch. 4, p. 215).

[82] 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. 4, p. 215).

[83] Generally, this means the local authority must assess the risk and determine whether there are reasonable grounds for concluding there is a danger to the health or safety of any person. That assessment must be specific to the circumstances of the case under consideration. The inconvenience, upset or unpleasantness of dealing with difficult or unreasonable people is not sufficient to trigger the exemption. The threshold cannot be achieved based on unfounded, unsubstantiated allegations (*Guide to LA FOIP*, Ch. 4, p. 215).

[84] The local authority should be able to detail what the harm is and to whom the harm threatens if the information were released (*Guide to LA FOIP*, Ch. 4, p. 215).

[85] The City applied section 20 of LA FOIP to the names of two employees that it described as “front-line staff” who regularly interact with the public and wear visible name tags.

These individuals were identified in the records as employees who reported on the Applicant to City officials. The City also asserted that given past security incidents and bans involving the Applicant, it believes that it is necessary to withhold the names of the employees to safeguard their well-being and safety.

[86] As noted above, the City only needs to establish that there is a possibility of harm to meet the test for the application of section 20 of LA FOIP. Based on the information provided by the City and the information in the records, I am satisfied that the disclosure of the witnesses' names and contact details on pages 190-191 and 205-206 to the Applicant could threaten their safety or physical or mental health. Therefore, I find that the City properly applied section 20 of LA FOIP. I recommend that the City continue to withhold this information.

IV FINDINGS

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

[88] I find that the City conducted a reasonable search for records.

[89] I find that the City properly applied subsection 21(b) of LA FOIP.

[90] I find that the City did not properly apply subsection 28(1) of LA FOIP to the address on pages 1-3 and the telephone number and address on page 41.

[91] I find that the City properly applied subsection 28(1) of LA FOIP in all other cases.

[92] I find that the City properly applied subsection 16(1)(b) of LA FOIP.

[93] I find that the City did not properly apply subsection 14(1)(e) of LA FOIP.

[94] I find that the City did not properly apply subsection 14(1)(m) of LA FOIP.

[95] I find that the City properly applied subsection 20 of LA FOIP.

V RECOMMENDATIONS

[96] I recommend that the City take no further action in relation to its search for records.

[97] I recommend that the City continue to withhold information as set out in Appendix A to this Report.

[98] I recommend that the City, within 30 days of issuance of this Report, release the information as set out in Appendix A.

Dated at Regina, in the Province of Saskatchewan, this 14th day of September, 2023.

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

Appendix A

Page No.	Severance No.	LA FOIP Exemption(s) applied	Description	Recommendation
1	1	28(1)	Bylaw ticket status	Release
2	2	28(1)	Letter - summons	Release
3	3	28(1)	Letter - summons	Release
15	4	21(b), (c)	Email	Withhold
16	5	28(1), 16(1)(a)	Email	Withhold
17	6	16(1)(b)	Email	Withhold
18	7	21(b), (c)	Email	Withhold
19	8	28(1), 16(1)(a)	Email	Withhold
27	9	28(1)	Photo of poster	Withhold
30	10	28(1)	Photo of poster	Withhold
34	11	28(1)	Photo of poster	Withhold
35	12	28(1),	Email	Withhold
35	13	28(1),	Email	Withhold
35	14	28(1),	Email	Withhold
36	15	28(1),	Email	Withhold
36	16	28(1)	Email	Withhold
37	17	28(1)	Email	Withhold
38	18	28(1)	Email	Withhold
38	19	28(1)	Email	Withhold
38	20	28(1)	email	Withhold
40	21	28(1)	Email	Withhold
41	22	28(1)	Email	Release
42	23	28(1)	Email	Withhold
56	24	28(1)	Email	Withhold
62	25	21(1)(b)	Email	Withhold
65	26	28(1)	Email attachment	Withhold
66	27	28(1)	Email attachment	Withhold
175	28	21(b), (c)	Email	Withhold
179	29	21(b), (c)	Email	Withhold
180	30	21(b), (c)	Email	Withhold
182	31	28(1)	Email attachment	Withhold
188	32	14(1)(m)	Internal Security Report	Release
188	33	14(1)(e)	Internal Security Report	Release
189	34	14(1)(e)	Internal Security Report	Release
190	35	14(1)(m)	Internal Security Report	Release
190	36	20	Internal Security Report	Withhold
190	37	14(1)(e)	Internal Security Report	Release
191	38	14(1)(e), 20	Internal Security Report	Release all but the name and contact details for witness
192	39	14(1)(m)	Internal Security Report	Release

192	40	14(1)(e)	Internal Security Report	Release
193	41	14(1)(e)	Internal Security Report	Release
194	42	14(1)(m)	Internal Security Report	Release
194	43	14(1)(e)	Internal Security Report	Release
195	44	14(1)(e)	Internal Security Report	Release
196	45	14(1)(m)	Internal Security Report	Release
196	46	14(1)(e)	Internal Security Report	Release
197	47	14(1)(e)	Internal Security Report	Release
198	48	14(1)(m)	Internal Security Report	Release
198	49	14(1)(e)	Internal Security Report	Release
202	50	14(1)(e)	Internal Security Report	Release
203	51	14(1)(m)	Internal Security Report	Release
203	52	14(1)(e)	Internal Security Report	Release
204	53	14(1)(e)	Internal Security Report	Release
205	54	14(1)(m)	Internal Security Report	Release
205	55	20	Internal Security Report	Withhold
205	56	28(1) (photograph)	Internal Security Report	Withhold
205	57	14(1)(e)	Internal Security Report	Release
206	58	14(1)(e), 20	Internal Security Report	Release all but the name and contact details for the witness
210	59	14(1)(m)	Internal Security Report	Release
210	60	14(1)(e)	Internal Security Report	Release
211	61	14(1)(e)	Internal Security Report	Release
218	62	14(1)(m)	Internal Security Report	Release
218	63	14(1)(e)	Internal Security Report	Release
219	64	14(1)(e)	Internal Security Report	Release