



REVIEW REPORT 098-2022

Rural Municipality of North Qu'Appelle No. 187

March 15, 2023

Summary:

The Applicant submitted an access to information request to the Rural Municipality of North Qu'Appelle No. 187 (RM) requesting investigation reports on code of ethics complaints. The RM withheld records in full pursuant to subsections 14(1)(b)(iii), 15(1)(b)(ii), 16(1)(a), (b), 22(1)(c), 28(1) and 29(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant requested a review of the RM's decision. The Commissioner found the RM did not meet its obligation pursuant to section 8 of LA FOIP. The Commissioner found the RM properly applied subsection 16(1)(a) of LA FOIP to parts of the records, and also found it properly applied subsections 28(1) and 29(1) of LA FOIP to some parts of the records, but not to others. The Commissioner further found the RM did not meet the burden of proof pursuant to section 51 of LA FOIP that subsections 14(1)(b)(iii), 15(1)(b)(ii) and 16(1)(b) apply to the records. The Commissioner also found that subsection 22(1)(c) of LA FOIP has no application in this matter. The Commissioner recommended the RM ensure it has policies and procedures in place for conducting line-by-line reviews and applying severance to records that helps it meet its obligations pursuant to section 8 of LA FOIP. The Commissioner also recommended that within 30 days of issuance of this Report that the RM release the records to the Applicant subject to the portions that should continue to be withheld pursuant to subsections 16(1)(a), 28(1) and 29(1) of LA FOIP.

I BACKGROUND

[1] On March 10, 2022, the Rural Municipality of North Qu'Appelle No. 187 (RM) received an access to information request from the Applicant as follows:

Report from early resolution the complete report for [identifiable individual A] dated November 30, 2020

Report from early resolution the complete report for [identifiable individual B] dated November 30, 2020

Report from early resolution the complete report for [Applicant] dated November 30, 2020

Report from early resolution the complete report for [identifiable individual C] dated November 30, 2020

[2] In its section 7 decision dated May 9, 2022, the RM responded to the Applicant as follows:

...
Access to the records you have requested is denied pursuant to sections/clauses/subclauses: sections 14(1)(b)(iii) and 15(1)(b)(ii) and 16(1)(a) and 16(1)(b) and 22(1)(c) and 28(1) and 29(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (the Act).

[3] On May 24, 2022, my office received a request for review from the Applicant regarding the RM's decision to withhold records in full.

[4] On June 9, 2022, my office sent notifications to the RM and the Applicant of my office's intention to undertake a review of the RM's decision.

[5] On August 10, 2022, my office received the submission from the RM. My office did not receive a submission from the Applicant.

II RECORDS AT ISSUE

[6] The records are four individual code of ethics investigation reports produced by an independent investigator for the RM. Each report concerns a separate individual who made an ethics complaint; record one concerns the Applicant. There are a total of 74 pages as follows:

- Report 1 – 29 pages
- Report 2 – 32 pages
- Report 3 – 7 pages

- Report 4 – 6 pages

[7] The RM withheld all 74 pages in full pursuant to subsections 14(1)(b)(iii), 15(1)(b)(ii), 16(1)(a), (b), 22(1)(c), 28(1) and 29(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[8] The RM is a “local authority” pursuant to subsection 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did the RM properly apply subsection 16(1)(a) of LA FOIP?

[9] Before I begin my analysis of subsection 16(1)(a) of LA FOIP, I would like to address the RM’s obligation under section 8 of LA FOIP to conduct a line-by-line review and not claim blanket exemptions. That is, rather than conducting a line-by-line review and applying exemptions to only portions of the records where the exemptions apply, the RM withheld records in full under multiple exemptions. In my office’s [Review Report 335-2017](#), I stated that this kind of approach is not consistent with a local authority’s obligation pursuant to section 8 of LA FOIP, which provides as follows:

8 Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.

[10] The rule is exceptions to the right of access should be limited and specific. By withholding the records in full under multiple exemptions without indicating on which portions of the records those exemptions apply, the RM was not applying its exemptions in a limited and specific way. By conducting a line-by-line review and applying exemptions to only those portions where it found the exemptions applies, the RM would have been able to protect what was necessary and yet make available to the Applicant records that do not qualify for

exemptions. By not doing so, the RM did not meet its obligation pursuant to section 8 of LA FOIP. I recommend the RM ensure it has policies and procedures in place for conducting line-by-line reviews and applying severance to records that helps it meet its obligations pursuant to section 8 of LA FOIP.

[11] I will now continue with my analysis of subsection 16(1)(a) of LA FOIP.

[12] Subsection 16(1)(a) of LA FOIP provides:

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

(a) advice, proposals, recommendations, analyses or policy options developed by or for the local authority;

[13] Subsection 16(1)(a) of LA FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose advice, proposals, recommendations, analyses or policy options developed by or for a local authority (*Guide to LA FOIP*, Ch. 4, p. 105).

[14] The following two-part test can be applied:

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?

2. Was the advice, proposals, recommendations, analyses and/or policy options developed by or for the local authority?

(*Guide to LA FOIP*, Ch. 4, pp. 105-108).

[15] Below is an analysis to determine if the two-part test is met:

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?

[16] In the RM's submission to my office, it stated as follows:

...Recommendations developed for the local authority...[Investigator] was hired by the municipality to investigate Code of Ethics allegations and provide recommendations for action, or non-action, to the council about the allegations against them and staff. Those recommendations may, or may not, include personal information related to discipline or corrective actions or policy considerations.

[17] It appears as if the RM is only claiming that recommendations are involved. A “recommendation” is a specific piece of advice about what to do, especially when given officially; it is a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious. (*Guide to LA FOIP*, Ch. 4, p. 106).

[18] The RM withheld all four records in full and has taken a blanket approach to applying its exemptions as I have previously described in this Report. However, I note the following paragraphs on each of the four reports clearly contains “recommendations” as per the definition, and I am satisfied they meet the first part of the test:

- Report 1 – paragraph 106
- Report 2 – paragraph 115
- Report 3 – paragraph 28
- Report 4 – paragraph 21

[19] Except for the parts of the reports described in paragraph [18] of this Report, the first part of the test is not met for the other parts of the records. Since both parts of the test must be met, the RM did not properly apply subsection 16(1)(a) of LA FOIP to the records, except the parts described in paragraph [18] of this Report. I will analyze the other parts in the paragraphs below.

2. Was the advice, proposals, recommendations, analyses and/or policy options developed by or for the local authority?

[20] “Developed by or for” means the advice, proposals, recommendations, analyses and/or policy options must have been created either: 1) within the local authority, or 2) outside the local authority but for the local authority (for example, by a service provider or stakeholder). For information to be developed by or for a local authority, the person developing the information should be an official, officer or employee of the local authority,

be contracted to perform services, be specifically engaged in an advisory role (even if not paid), or otherwise have a sufficient connection to the local authority (*Guide to LA FOIP*, Ch. 4, p. 108).

[21] In its submission, the RM stated it hired a consultancy firm to complete the investigations into the ethics complaints. Upon review of each of the four reports completed by the firm, I note the name of the investigator is included. An internet search indicates the individual who completed the reports is a professional practicing in arbitration and mediation. The recommendations are made to specific members of the RM council and to council as a whole, who are to take certain actions. As such, the second part of the test is met, and I find the RM properly applied subsection 16(1)(a) of LA FOIP to the information described at paragraph [18] of this Report. I recommend the RM continue to withhold these paragraphs pursuant to subsection 16(1)(a) of LA FOIP. I will consider the remaining portions of the records under the other exemptions the RM has applied.

3. Did the RM properly apply subsection 16(1)(b) of LA FOIP?

[22] Subsection 16(1)(b) of LA FOIP provides:

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;

...

[23] Subsection 16(1)(b) of LA FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose consultations or deliberations involving officers or employees of a local authority. The following two-part test can be applied:

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).

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

1. Does the record contain consultations or deliberations?

[25] “Consultation” means:

- the action of consulting or taking counsel together: deliberation, conference;
- a conference in which the parties consult and deliberate.

(*Guide to LA FOIP*, Ch. 4, p. 113).

[26] Deliberation means:

- the action of deliberating (to deliberate: 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.

[27] In the RM’s submission to my office, it stated the following:

LA FOIP s. 16(1)(b) consultations or deliberations involving officers or employees of the local authority to provide for free, open discussion during interviews to determine substance of report – [interviewer] met with the Complainants, as well as with members of council, collectively and individually, Members of Administration staff individually and organized Hamlet Board of Pasqua Lake members collectively, to hear and record the substance of the respective parties interpretations and opinions of the alleged events/issues...

[28] Although the RM claims portions of the records contain consultations and deliberations, it has not pointed out where those portions exist. Upon review of the record, it is not apparent where they exist, either. In my office’s [Review Report 205-2019, 255-2019](#) concerning the Rural Municipality of Sherwood, I stated at paragraph [58] that regardless if an exemption is mandatory or not, section 51 of LA FOIP indicates the burden is on the head concerned

to establish that access to the records may or must be refused. Section 51 of LA FOIP provides as follows:

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.

[29] In this matter, the RM has not sufficiently argued which portions of the records contain consultations or deliberations, nor has it pointed out the portions of the records that contain these. As such, the first part of the test is not met, and I find the RM did not meet the burden of proof pursuant to section 51 of LA FOIP that subsection 16(1)(b) of LA FOIP applies. I will, however, still consider the RM's exemptions to the remaining portions of the records.

4. Did the RM properly apply subsection 14(1)(b)(iii) of LA FOIP?

[30] Subsection 14(1)(b)(iii) of LA FOIP is a discretionary harm-based exemption that provides as follows:

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

...
(b) be injurious to the enforcement of:

...
(iii) a resolution or bylaw;

[31] Subsection 14(1)(b) of LA FOIP permits refusal of access in situations where release of a record could be injurious to the enforcement of an Act or regulation provincially or federally or a resolution or bylaw (*Guide to LA FOIP*, Chapter 4, "Exemptions from the Right of Access", updated April 29, 2021 [*Guide to LA FOIP*, Ch. 4], p. 50).

[32] The following two-part test can be applied.

1. Which Act, regulation, resolution or bylaw is being enforced?
2. Could release of the record injure enforcement of the Act, regulation, resolution or bylaw?

(Guide to LA FOIP, Ch. 4, pp. 50-51)

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

1. Which Act, regulation, resolution or bylaw is being enforced?

[34] The RM applied subsection 14(1)(b)(iii) of LA FOIP to all 74 pages of the records. In its submission to my office, the RM cited Bylaw 2021-002 clauses 34 & 45 as the bylaw being enforced. From the RM's website <https://rmnorthquappelle.ca/PDFS/Bylaws/Bylaw-2021-002-Code-of-Ethics-Bylaw.pdf>, clause 34 is categorized under the complaint process and clause 45 is categorized under dispute resolution. The clauses are described as follows:

34. The investigator will provide the report to council in a closed meeting.

...

45. Mediation shall be confidential.

[35] A "bylaw" means a rule adopted by a local public body with bylaw-making powers, such as a municipal council (*Guide to LA FOIP*, Ch. 4, p. 50).

[36] From a review, all four records can be described as code of ethics investigation reports. They include descriptions of the complaints, recorded responses from respondents, the purpose of the investigations, investigation procedures (including analyses of information gathered), investigation outcomes, and recommendations by the investigator. All 74 pages of the records meet the requirements of documents within a complaints and/or dispute resolution process under the RM's Bylaw 2021-002. I am satisfied the first part of the test is met.

2. Could release of the record injure enforcement of the Act, regulation, resolution or bylaw?

[37] 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. For this provision to apply there must be objective grounds for believing that disclosing the information could result in the harm alleged (*Guide to LA FOIP*, Ch. 4, p. 51).

[38] “Injury” implies damage or detriment. When there is a review by the IPC, the local authority is invited to provide a submission (arguments). The local authority should describe the harm in detail to support the application of the provision. Local authorities should not assume that the harm is self-evident on the face of the records (*Guide to LA FOIP*, Ch. 4, p. 51).

[39] In its submission, the RM stated the following:

LA FOIP sections 14(1)(b)(iii) and 22(1)(c) and The Municipalities Act s. 120(2)(a) under authority of RM Bylaw 2021-002, clauses 34 & 45 – Complaints and mediation to be kept confidential and addressed ‘in-camera’.

[40] The RM’s argument does not demonstrate how the release of the portions to which it applied subsection 14(1)(b)(iii) of LA FOIP could be injurious to the enforcement of Bylaw 2021-002. As I have noted in my office’s [Review Report 059-2017](#), the Supreme Court of Canada found that the promise of confidentiality in an investigation conducted by the Office of the Commissioner of Official Languages (OCOL) is not absolute. OCOL is subject to the federal *Privacy Act* similar to how the RM is subject to LA FOIP. The burden is on the RM to demonstrate that the withheld information falls within the criteria of this exemption in order to be withheld, but it has not done so.

[41] As the second part of the test is not met, I find that the RM has not met the burden of proof pursuant to section 51 of LA FOIP that subsection 14(1)(b)(iii) of LA FOIP applies.

5. Does subsection 22(1)(c) of LA FOIP apply?

[42] Section 22(1)(c) of LA FOIP provides as follows:

22(1) Where a provision of:

...

(c) a resolution or bylaw;

that restricts or prohibits access by any person to a record or information in the possession or under the control of a local authority conflicts with this Act or the regulations made pursuant to it, the provisions of this Act and the regulations made pursuant to it shall prevail.

[43] Section 22(1) of LA FOIP provides that where there is a conflict between LA FOIP and any other Act or regulation, LA FOIP will prevail. LA FOIP prevails even where another Act or regulation restricts or prohibits access (*Guide to LA FOIP*, Ch. 1, p. 19).

[44] “Prevail” means a provision of one Act having priority over a conflicting provision in another Act. The ordinary meaning of the word means to be superior in strength or influence (*Guide to LA FOIP*, Ch. 1, p. 19).

[45] Subsection 22 of LA FOIP ensures that the fundamental rights enshrined in LA FOIP are given proper deference when interpreting legislative intent as to its application in conjunction with other statutes. This primacy clause is a strong expression of legislative intent and a tool for ensuring public policy objectives are met. In the event of a contest between two statutes, the legislature is presumed to not intend conflict between the statutes. Therefore, if an interpretation allows concurrent application, then that interpretation should be adopted (*Guide to LA FOIP*, Ch. 1, p. 20).

[46] Regarding its reliance on subsection 22(1)(c) of LA FOIP, the RM stated as follows:

LA FOIP sections 14(1)(b)(iii) and 22(1)(c) and *The Municipalities Act* s. 120(2)(a) under authority of RM Bylaw 2021-002, clauses 34 & 45 – Complaints and mediation to be kept confidential and addressed ‘in-camera’

[47] It appears the RM’s argument is its Bylaw prevails over LA FOIP by way of section 22(1)(c) of LA FOIP. To support its position, the RM cited its Bylaw 2021, clauses 34 and 45 described in paragraph [15] of this Report and subsection 120(2)(a) of *The Municipalities Act* which provides as follows:

120(2) Councils and council committees may close all or part of their meetings to the public if the matter to be discussed:

(a) is within one of the exemptions in Part III of *The Local Authority Freedom of Information and Protection of Privacy Act*; or

[48] I do not see the bylaw as having any application. If the RM was asserting its bylaws supersede access rights in LA FOIP, it should have considered if subsection 22(3) of LA FOIP had any application, which provides as follows:

22(3) Subsection (1) does not apply to:

(a) *The Health Information Protection Act*;

(a.01) Part VIII of *The Vital Statistics Act, 2009*;

(a.1) any prescribed Act or prescribed provisions of an Act; or

(b) any prescribed regulation or prescribed provisions of a regulation;

and the provisions mentioned in clauses (a), (a.01), (a.1) and (b) shall prevail.

[49] Subsection 22(3) of LA FOIP though does not mention any provision of *The Municipalities Act* or bylaws, and neither does subsection 8.1(c) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations), which provides as follows:

8.1 For the purposes of clause 22(3)(a.1) of the Act, the following are prescribed as provisions to which subsection 22(1) of the Act does not apply:

...

(c) subsections 201(5) and (6) and sections 231 and 232 of *The Municipalities Act*;

[50] Subsections 201, 231 and 232 of *The Municipalities Act*, do not appear to deal with the confidentiality of ethics complaints.

[51] Therefore, I do not find that subsections 22(1) of LA FOIP has any application in this review. I will still review the RM's reliance on subsections 28(1) and 29(1) of LA FOIP in the next part of this Report.

6. Did the RM properly apply subsections 28(1) and 29(1) of LA FOIP?

[52] As I have stated earlier in this Report, the RM did not indicate on which portions of the records subsections 28(1) or 29(1) of LA FOIP would apply. Because these are mandatory exemptions, however, I will still consider them based on a review of the records.

[53] Subsections 28(1) and 29(1) of LA FOIP provide as follows:

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.

...

29(1) Subject to subsection (2) and to any other Act, the personal information of a deceased individual shall not be disclosed until 25 years after the death of the individual.

[54] Subsection 28(1) of LA FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains consents to its disclosure or if 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).

[55] Subsection 29(1) of LA FOIP provides that the personal information of a deceased individual cannot be disclosed until 25 years after the death of the individual (*Guide to LA FOIP*, Ch. 6, p. 245). The RM indicated that "information in the reports is interpreted as opinion about the deceased..." who passed away in 2020. I note that 25 years have not yet passed since this date.

[56] For the privacy provisions at Part IV of LA FOIP to be engaged, the information at issue must constitute "personal information" pursuant to subsection 23(1) of LA FOIP (*Guide to*

LA FOIP, Ch. 6, p. 38). Regarding the type of personal information involved, the RM stated as follows:

LA FOIP section 28(1) personal information – information in the reports is interpreted as the opinion of the complainant about the respondent and therefore the respondent’s personal information.

LA FOIP section 28(1) personal information – information within the reports is interpreted as opinion of the respondent about the respondent.

LA FOIP section 29(1) personal information of a deceased person – information within the reports is interpreted as opinion about a deceased person [(Name and title of deceased person), passed away (date of death)]

[57] Subsection 23(1) of LA FOIP 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:

- (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;
- (b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) information that relates to health care that has been received by the individual or to the health history of the individual;
- (d) any identifying number, symbol or other particular assigned to 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;
- (g) correspondence sent to a local authority by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;
- (h) the views or opinions of another individual with respect to the individual;

(i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;

(j) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(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

[58] The RM did not describe which portions of the records contain personal information for the purposes of subsections 28(1) and 29(1) of LA FOIP, but I note portions can be described as containing the personal views that individuals have of individuals other than the Applicant, which is personal information as defined by subsections 23(1)(h) and (k)(i) of LA FOIP. These portions include:

- Report 1 – paragraphs 18 (except the first sentence in the paragraph), 22, 23, 24, 25, 31, 32, 33, 37, 38, 44, 45, 46, 47, 53, 59, 60, 61, 62, 63, 68, 72, 73, 77, 81, 84, 85, 89, 90, 91, 92, 96, 97, 98, and 99;
- Report 2 – paragraphs 1, 4, 16, 17, 18, 19, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 41, 43, 44, 45, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 61, 62, 63, 64, 66, 67, 68, 69, 71, 72, 73, 74, 75, 77, 78, 79, 80, 82, 83, 84, 85, 86, 87, 92, 93, 94, 96, 97, 98, 99, 100, 101, 102, 103, 104, 106, 107, 108, 109, 110;
- Report 3 – paragraphs 1, 4, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24; and
- Report 4 – paragraphs 1, 4, 14, 15, 16, 17, and 18.

[59] I find the RM properly applied subsection 28(1) of LA FOIP as described in the preceding paragraph, and subsection 29(1) of LA FOIP to paragraphs 58 and 88 of Report 2. I recommend the RM continue withholding this information pursuant to subsections 28(1) and 29(1) of LA FOIP.

[60] Some portions of the records contain information the Applicant appears to have supplied in the form of allegations. In numerous reports, including my office's [Review Report 038-](#)

[2022](#) concerning the City of Lloydminster at paragraph [23], I stated it is an absurd result to withhold information from an Applicant that they supplied or would otherwise know. In this matter, this includes the following paragraphs on Report 1: 16, 17, 20, 21, 28, 29, 30, 35, 36, 40, 41, 43, 51, 55, 56, 57, 58, 66, 67, 70, 71, 75, 76, 79, 80, 83, 87, 88, 94 and 95. As such, I find the RM did not properly apply subsection 28(1) of LA FOIP to this information and recommend it release it to the Applicant.

[61] I note that portions of the records include the Applicant's name. I further note that other portions of the records contain views of another individual with respect to the Applicant. Subsection 30(1) of LA FOIP provides as follows:

30(1) Subject to Part III and subsections (2) and (3), an individual whose personal information is contained in a record in the possession or under the control of a local authority has a right to, and:

(a) on an application made in accordance with Part II; and

(b) on giving sufficient proof of his or her identity;

shall be given access to the record.

[62] Subsection 28(1) of LA FOIP would apply to a third party's personal information, not the Applicant's. I find the RM did not properly apply subsection 28(1) of LA FOIP to the Applicant's name as it appears in Report 1 and to the following paragraphs of Report 1 that contain opinions others made about the Applicant and recommend it release these paragraphs to the Applicant: 1, 3, 4, 18 (first sentence only), 42 and 52.

[63] In past reports (e.g., [Review Report 186-2019](#)), I have also stated that business card information is not considered personal information. Regarding professionals who undertake investigations and author reports of their findings, I have stated that their identity and contact information is not personal information (e.g., [Review Report 109-2021](#)). Regarding signatures, in [Review Report 149-2019, 191-2019](#), I stated that signatures of individuals when made in a professional context are not personal information. With this in mind, I find the RM did not properly apply subsection 28(1) of LA FOIP to this type of

information as it appears on page 1 of each of the four Reports. I recommend the RM release this information to the Applicant.

7. Did the RM properly apply subsection 15(1)(b)(ii) of LA FOIP?

[64] Subsection 15(1)(b)(ii) of LA FOIP provides:

15(1) A head may refuse to give access to a record that:

...

(b) discloses agendas or the substance of deliberations of meetings of a local authority if:

...

(ii) the matter discussed at the meetings are of such a nature that access to the records could be refused pursuant to this Part or Part IV

[65] Subsection 15(1)(b)(ii) of LA FOIP is a discretionary, class-based exemption. This provision is meant to protect the agendas and/or substance of deliberations of meetings of a local authority where the nature of the information discussed is subject to another exemption under Part III of LA FOIP or is personal information subject to privacy protections under Part IV (*Guide to LA FOIP*, Ch. 4, p. 98).

[66] The following two-part test can be applied:

1. Would the records disclose an agenda or substance of the deliberations of meetings of a local authority?
2. Are the matters discussed of a nature that the records could be refused under Parts III or IV of LA FOIP?

(*Guide to LA FOIP*, Ch. 4, pp. 98-100).

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

1. Would the records disclose an agenda or substance of the deliberations of meetings of a local authority?

[68] An “agenda” is a list of things to be done, as items to be considered at a meeting, arranged in order of consideration. “Substance” means generally more than just the subject or basis of the meeting. Rather, it is the essential or material part of the deliberations themselves. “Deliberation” means:

- the action of deliberating (to deliberate: 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.

(*Guide to LA FOIP*, Ch. 4, pp. 98-99)

[69] “Meeting” means an assembly or gathering at which the business of a local authority is considered. It includes both the meeting in its entirety and/or a portion of a meeting. The local authority should be able to identify the meeting that took place including the date, location, participants, purpose of the meeting, etc. (*Guide to LA FOIP*, Ch. 4, p. 99).

[70] In the RM’s submission it stated the following:

...the records requested, if released, could result in an individual reading them and accurately inferring the content of the meetings between Investigator, Complainants and Respondents, which would violate LA FOIP sections 14(1)(b)(iii), 16(1)(a) and (b), 28(1) and 29(1) and *The Municipalities Act* s. 120(2)(a) under authority of RM Bylaw 2021-002, clauses 34 & 35 – [Investigator] met with the complainants, as well as with members of council, collectively and individually, members of administration staff individually and organized hamlet board of Pasqua Lake members collectively, to hear and record the substance of the respective parties’ interpretations and opinions of the alleged events/issues...

[71] In this matter, I am able to tell the reports detail the meetings that occurred between the investigator contracted by the RM and different members of council. I am also able to tell the purpose was to review the ethics complaints, and that they occurred on specified dates. Disclosure of the records would reveal the substance of what was discussed in the meetings, so the first part of the test is met.

2. Are the matters discussed of a nature that the records could be refused under Parts III or IV of LA FOIP?

[72] For this exemption to apply, the RM must demonstrate how disclosure of the records would qualify for one exemption under Part III of LA FOIP, or that the information could be refused under Part IV of LA FOIP.

[73] The RM cited subsections 14(1)(b)(iii), 16(1)(a) and (b) of LA FOIP, which fall within part III of LA FOIP, and subsections 28(1) and 29(1) of LA FOIP that fall within Part IV of LA FOIP. The RM, though, has not met the burden of establishing on which parts of these records these exemptions would apply, and so the second part of the test is not met. As such, I find the RM did not meet the burden of proof pursuant to section 51 of LA FOIP that subsection 15(1)(b)(ii) of LA FOIP applies.

[74] I will still consider the RM's reliance on subsection 28(1) and 29(1) of LA FOIP later in this Report as they are mandatory exemptions.

IV FINDINGS

[75] I find the RM did not meet its obligation pursuant to section 8 of LA FOIP.

[76] I find the RM properly applied subsection 16(1)(a) of LA FOIP to parts of the records as I have outlined at paragraph [18] of this Report.

[77] I find the RM did not properly apply subsection 16(1)(a) of LA FOIP to the records except for the parts described in paragraph [18] of this Report.

[78] I find the RM did not meet the burden of proof pursuant to section 51 of LA FOIP that subsections 14(1)(b)(iii), 15(1)(b)(ii) and 16(1)(b) of LA FOIP apply to the records.

[79] I find that subsection 22(1) of LA FOIP does not have any application in this matter.

[80] I find the RM properly applied subsections 28(1) and 29(1) of LA FOIP to the parts of the records described in paragraphs [58] and [59] of this Report.

[81] I find the RM did not properly apply subsection 28(1) of LA FOIP to the information described in paragraphs [60], [62] and [63] of this Report

V RECOMMENDATIONS

[82] I recommend the RM ensure it has policies and procedures in place for conducting line-by-line reviews and applying severance to records that helps it meet its obligations pursuant to section 8 of LA FOIP.

[83] I recommend the RM continue to withhold the information described in paragraphs [18], [58] and [59] of this Report pursuant to subsections 16(1)(a) of LA FOIP and 28(1) and 29(1) of LA FOIP respectively, and that it release the remainder to the Applicant within 30 days of issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 15th day of March, 2023.

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