



REVIEW REPORT 098-2023

Saskatoon Police Service

November 9, 2023

Summary: The Applicant made an access to information request to the Saskatoon Police Service (SPS). SPS partially denied access pursuant to subsection 14(1)(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant was not satisfied with SPS' response and requested the Commissioner review the exemption it applied. The Commissioner found that SPS properly applied subsection 14(1)(c) of LA FOIP to the record and recommended that SPS continue to withhold the information pursuant to subsection 14(1)(c) of LA FOIP.

I BACKGROUND

- [1] On March 21, 2023, Saskatoon Police Service (SPS) received the Applicant's access to information request that stated: "Event, file from incident August 28 2020".
- [2] On March 24, 2023, SPS responded to the Applicant denying access to the records pursuant to subsection 14(1)(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [3] On April 11, 2023, my office received a request for review from the Applicant regarding exemption cited by SPS.
- [4] On May 26, 2023, my office provided notification to the Applicant and SPS of my office's intention to undertake a review.

[5] On July 14, 2023, SPS provided its submission to my office. The Applicant did not provide a submission to my office.

II RECORDS AT ISSUE

[6] The record at issue is one page of a 15-page document titled, “general occurrence report”. SPS withheld page 6, in part, pursuant to subsections 14(1)(c) of LA FOIP.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[7] 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 properly apply subsection 14(1)(c) of LA FOIP?

[8] As noted earlier, SPS applied subsection 14(1)(c) of LA FOIP to part of page 6 of the record.

[9] 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.

[10] 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. In this case, SPS indicated that the release “could 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?

...

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"?

[11] 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).

[12] In its submission to my office, SPS explained subsection 36(2) of *The Police Act, 1990*, provides it with the authority to conduct lawful investigations and enforce respective laws. SPS further stated the records relate to an assault incident, where the Applicant was the victim, and could result in charges being laid in the future under the *Criminal Code*.

[13] In my office's [Review Reports 210-2022, 245-2022](#) and [040-2023](#), I followed 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 occurring. 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?

[14] As indicated earlier, SPS argued that the 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 steps taken by the officer to locate evidence related to the occurrence. This is common practice for a police officer while investigating a criminal offence. Disclosure of the information withheld pursuant to subsection 14(1)(c) would disclose information with respect to the investigation...

[15] 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).

[16] 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).

[17] “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).

[18] 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, SPS has investigated and stated that the withheld portion of the record indicates what steps the police officer took in investigating the matter. As such, release of the record could disclose these steps, or information with respect to a lawful investigation. Therefore, I am satisfied that the second part of the test is met for subsection 14(1)(c) of LA FOIP.

[19] As such, I find that SPS properly applied subsection 14(1)(c) of LA FOIP to part of page 6 of the record. Therefore, I recommend SPS continue to withhold this information pursuant to subsection 14(1)(c) of LA FOIP.

IV FINDINGS

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

[21] I find that SPS properly applied subsection 14(1)(c) of LA FOIP to part of page 6 of the record.

V RECOMMENDATION

[22] I recommend that SPS continue to withhold part of page 6 of the record where it applied subsection 14(1)(c) of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 9th day of November, 2023.

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