




Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 111-2022

Saskatoon Police Service

January 18, 2022 

Summary:

The Applicant sought access to information from the Saskatoon Police Service (SPS) regarding an incident involving them. SPS denied access to portions of some records but others in full. It claimed that the withheld information was exempt pursuant to section 20 and subsections 13(1)(b), 14(1)(c), (j), (k), and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). SPS also claimed that some records did not exist. The Applicant asked the Commissioner to conduct a review. The Commissioner found that SPS had properly applied section 20 and subsections 14(1)(c), (j), (k) and 28(1) of LA FOIP to some information. He also found that SPS did not properly apply subsection 13(1)(b) of LA FOIP. He found that SPS had conducted a reasonable search for records and properly identified non-responsive information. The Commissioner recommended that SPS continue to withhold the information he found to be exempt and release the remaining information. He added that SPS should consider releasing, subject to any applicable exemptions, the information that SPS found to be not responsive. He also recommended that SPS take no further action in relation to its search for records.

I BACKGROUND

- [1] The Saskatoon Police Service (SPS) received an access to information request from the Applicant on May 10, 2022. The Applicant sought access to:

Information pertaining to file [number], including any video and audio footage as well as any records or statements from this incident.

- [2] On May 12, 2022, SPS spoke with the Applicant who clarified that they were also seeking access to any Air Support Unit (ASU) video related to the occurrence.

- [3] SPS issued a decision letter pursuant to section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) on May 27, 2022. Its decision denied access to portions of the responsive records and some records in full pursuant to section 20 and subsections 13(1)(b), 14(1)(c), (j), (k) and 28(1) of LA FOIP. It also claimed that portions of one record were not responsive. In accordance with subsection 7(2)(e) of LA FOIP, SPS also stated that the ASU video footage requested by the Applicant did not exist.
- [4] On June 6, 2022, the Applicant asked my office to conduct a review of SPS' decision.
- [5] On June 22, 2022, my office notified the Applicant and SPS of my office's intention to conduct a review and invited them to provide a submission.
- [6] My office received an Index of Records from SPS on July 27, 2022, and a submission on August 22, 2022. The Applicant did not provide a submission.

II RECORDS AT ISSUE

- [7] SPS identified five records comprised of 52 pages and three audio/visual recordings. SPS released 17 pages in full, withheld portions of 32 pages and withheld three pages in full. SPS also withheld in full the three audio/visual recordings (one audio and two In-Car Camera recordings). The following table describes the records or portions of records withheld and the exemptions claimed. In the discussion that follows, I have assigned a number to the severances that corresponds to the order in which they appear on the page.

Record No.	Page No(s).	Description	Released/Withheld	Exemption(s) claimed
1 (44 pages in total)	4, 9, 10, 11, 12, 13, 20, 24, 25, 27, 28, 31	Occurrence Report	Released in part	LA FOIP subsection 14(1)(c)
1	5, 6, 7, 13, 18, 19, 29	Occurrence Report	Released in part	LA FOIP subsection 14(1)(k)

1	2, 3, 4, 8, 9, 10, 11, 12, 13, 18, 19, 24, 26, 27, 28, 31, 35, 38, 40	Occurrence Report	Released in part	LA FOIP subsection 28(1)
1	21	Occurrence Report	Withheld in full	LA FOIP subsection 14(1)(k)
1	24	Occurrence Report	Released in part	LA FOIP subsection 14(1)(j)
	42 and 43	Occurrence Report	Withheld in full	LA FOIP subsection 13(1)(b)
2 (8 pages in total)	1-5	Call Summary	Released in part	LA FOIP subsections 14(1)(c) and 28(1)
2	5-6	Call Summary	Released in part	Non-responsive
2	7	Call Summary	Released in part	LA FOIP subsection 14(1)(j)
3		Audio Recording (Eight telephone calls to general line related to call for service SP CP [file number] December 10-11, 2020)	Withheld in full	LA FOIP subsections 14(1)(c) and 28(1)
4		In-Car Camera recording (dash camera)	Withheld in full	LA FOIP section 20
5		In-Car Camera recording (rear seat camera)	Withheld in full	LA FOIP section 20

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

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

2. Did SPS conduct a reasonable search for records?

[9] As SPS claimed that ASU video footage did not exist, this raises the question whether SPS conducted a reasonable search for records.

[10] Section 5 of LA FOIP provides an applicant with a right of access to records in the possession or control of a local authority. 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: June 29, 2021, [*Guide to LA FOIP*, Ch. 3], at p. 7).

[11] Section 5 and subsection 5.1(1) of LA FOIP provide:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a local authority.

5.1(1) Subject to this Act and the regulations, a local authority shall respond to a written request for access openly, accurately and completely.

[12] If a search does not produce any records or some records are produced but a specific record has not been found, local authorities shall give a written notice to the applicant in accordance with subsection 7(2)(e) of LA FOIP. That subsection provides:

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 that the record does not exist;

[13] The threshold to be met is one of “reasonableness.” In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable. 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, at p. 7).

[14] In a review of search efforts, the local authority should provide my office with detailed information about its efforts to conduct a search. Examples of the type of information that a local authority can provide to my office to support a claim of reasonable search can be found at Chapter 3, pages 9 and 10 of my office’s *Guide to LA FOIP*. They include:

- 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 were included in the search.
- Identify the employee(s) involved in the search and how they are 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. For example, are the records classified by: alphabet, year, function, subject?
- Consider providing a copy of your organization’s record schedule and screen shots of the electronic directory (folders & subfolders).
- If the record has been destroyed, provide copies of record schedules and/or destruction certificates.
- Explain how you have considered records stored off-site.
- 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 request. 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.

[15] The above list is meant to be a guide. Providing this information is not a guarantee that my office will find the search conducted was reasonable. Each case will require different search strategies and information depending on the records requested.

[16] Among other records, the Applicant seeks access to video footage taken by SPS' ASU. SPS' asserted that the ASU is a specialized team within SPS that operates a twelve-hour shift according to a "predetermined duty calendar." The ASU is used primarily to respond to dispatched calls for service and patrol areas for suspicious activity, but it does not attend all calls for service and is not in the air for the entire shift. During the shift, it is required to land for fueling and other reasons.

[17] SPS asserted that its Access and Privacy Unit staff examined the ASU team calendar and determined that the ASU was not operating at the time of the incident and therefore, no video footage would exist. SPS explained that on the day in question, the ASU had completed its twelve-hour shift prior to the occurrence, and it did not return to duty until the following day at 6 am.

[18] SPS also asserted that there were no notes or information in the Occurrence Report (Record 1) that would indicate that the ASU was operating at the time.

[19] I find that SPS' search for records was conducted by staff with knowledge of the record holdings and the subject matter of the request. I am also satisfied that SPS provided a reasonable explanation as to why the ASU video footage did not exist. For all these reasons, I find that SPS conducted a reasonable search for responsive records. I recommend that it take no further action.

3. Is there information in the records that is not responsive to the request?

[20] SPS claimed that Record 2 pages 5 (severances 3 to 7) and 6 (severances 1 and 2) contain information that is not responsive to the Applicant's access to information request.

[21] When a local authority receives an access to information request, it must determine what information is responsive to the request. Responsive means relevant. The term describes anything that is reasonably related to the request. It follows that any information or records that do not reasonably relate to an applicant's request will be considered "not-responsive."

[22] An applicant's access to information request sets out the boundaries of relevancy. The public body may treat portions of a record as non-responsive if they are clearly separate and distinct and not reasonably related to the access request. The purpose of LA FOIP is best served when a local authority adopts a liberal interpretation of a request (*Guide to LA FOIP*, Ch. 3, at pp. 12 to 13).

[23] SPS asserted that the information withheld as non-responsive is information about a vehicle that was unrelated to SPS' file number at issue here. It added that it is common practice for officers to do database searches on license plates while going about their duties. If an officer is responding to a call for service and does a search on a license plate, the results will appear on the log for that call for service even though it is unrelated to the matter.

[24] As noted above, the Applicant sought access to records relating to a specific SPS file number. On a review of the non-responsive information, it appears to relate to a vehicle that is not related to that SPS file number. This information is separate and distinct from, and not reasonably related to the Applicant's access to information request. I find,

therefore, that the information withheld from Record 2 and described in paragraph [20] above is not responsive to the Applicant's access to information request.

[25] However, consistent with my blog, [“What About the Non-Responsive Records?”](#) and my office's [Review Report 173-2020, 190-2020 and 157-2021](#)), local authorities should consider releasing non-responsive information. I recommend that SPS consider releasing the non-responsive portions of Record 2, subject to any exemptions that may apply.

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

[26] SPS applied subsection 14(1)(c) of LA FOIP to:

- Record 1 pages 4 (severances 1 and 4), 9 (severances 1 and 2), 10 (severance 5), 11 (severances 1 to 4, 6 and 7), 12 (severance 2), 13 (severances 3 and 4), 20 (severance 1), 24 (severances 1, 3, 4), 25 (severance 1), 27 (severances 1, 4, 5), 28 (severances 2 and 3), 31 (severance 2);
- Record 2 pages 1 (severances 1, 6, 7), 2 (severances 1 to 5), 3 (severance 1), 4 (severances 1 to 3), 5 (severances 1 and 2); and
- Record 3.

[27] Subsection 14(1)(c) of LA FOIP provides as follows:

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

[28] To determine if subsection 14(1)(c) of LA FOIP applies to a record, my office uses the following two-part test:

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

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

(*Guide to LA FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 29, 2021, [*Guide to LA FOIP*, Ch. 4] at pp. 52 to 53)

[29] I will now consider if part one of the test has been met.

1. Does SPS’ activity qualify as a “lawful investigation”?

[30] A lawful investigation is an investigation that is authorized or required and permitted by law. The investigation can be concluded, active and ongoing or be occurring in the future. In order to meet this part of the test, the local authority should identify the legislation under which the investigation is occurring (*Guide to LA FOIP*, Ch. 4, at p. 52).

[31] SPS asserted that the information withheld related to a lawful investigation under the *Criminal Code* and a warrant issued under *The Mental Health Services Act* (MHSA).

[32] Previous reports of my office have found that police investigations into possible violations of the *Criminal Code* and activities authorized by MHSA qualify as lawful investigations (see for example my office’s [Review Report 066-2020](#)). Following the same approach here, I find that part one of the test has been met.

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

[33] To meet the second part of the test, it is only necessary for the local authority to demonstrate that the information in the record is information with respect to a lawful investigation. 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, at p. 53).

[34] SPS’ submission asserted that the disclosure of information to which it applied subsection 14(1)(c) of LA FOIP would reveal information with respect to a lawful investigation. Based

on a review of the records, I find that the release of the information described in paragraph [26] above would disclose information with respect to a lawful investigation.

[35] Therefore, I find that SPS properly applied subsection 14(1)(c) of LA FOIP. Since I have found that SPS properly applied subsection 14(1)(c) of LA FOIP, I will not consider the other exemptions that it applied to the same information. I recommend that SPS continue to withhold the information described in paragraph [26] above pursuant to subsection 14(1)(c) of LA FOIP.

5. Did SPS properly apply subsections 14(1)(j) and (k) of LA FOIP?

[36] SPS applied subsection 14(1)(j) of LA FOIP to Record 1 page 24 (severance 2) and Record 2 page 7 (severance 1).

[37] SPS applied subsection 14(1)(k) of LA FOIP to Record 1 pages 5 (severance 1), 6 (severance 1), 7 (severance 1), 13 (severance 4), 18 (severance 2), 19 (severance 2), and 29 (severance 1). SPS applied subsection 14(1)(k) of LA FOIP to all of Record 1 page 21.

[38] Subsection 14(1)(j) and (k) of LA FOIP are discretionary exemptions which provide as follows:

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;

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

Subsection 14(1)(j) of LA FOIP

[39] The following two-part test must be met for the application of subsection 14(1)(j) of LA FOIP. However, only one of the questions needs to be answered in the affirmative for the exemption to apply.

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, at p. 72)

[40] SPS applied this exemption to event codes in Records 1 and 2. My office has previously held that this type of information is exempt pursuant to subsection 14(1)(j) of LA FOIP. Previous reports have consistently found that disclosure of such codes could facilitate the commission of an offence (see for example, my office's Review Reports [353-2019](#) and [023-2019, 098-2019](#)).

[41] Following the same approach here, I find that SPS properly applied subsection 14(1)(j) of LA FOIP to the severed information described in paragraph [36] above. Accordingly, I recommend that SPS continue to withhold this information.

Subsection 14(1)(k) of LA FOIP

[42] In order for subsection 14(1)(k) of LA FOIP to apply, the following two-part test must be met:

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

(Guide to LA FOIP, Ch, 4, at pp. 74 to 77)

[43] I now turn to consider part one of the two-part test.

1. Is there a law enforcement matter involved?

[44] “Law enforcement” matter includes:

- Policing, including criminal intelligence operations, or
- Investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment.

(Guide to LA FOIP, Ch. 4, at pp. 75 to 76)

[45] “Matter” should be given its plain and ordinary meaning. It does not necessarily have to apply to some specific on-going investigation or proceeding.

[46] Subsection 36(2) of *The Police Act, 1990* (PA) provides members of the police service with the following powers and responsibilities:

36(2) Unless otherwise indicated in his or her appointment, a member has the power and the responsibility to:

- (a) perform all duties that are assigned to constables or peace officers in relation to:
 - (i) the preservation of peace;
 - (ii) the prevention of crime and offences against the laws in force in the municipality; and
 - (iii) the apprehension of criminals, offenders and others who may lawfully be taken into custody;

[47] As noted above SPS asserted that the records in question were created in regard to a call for service involving a warrant issued under MHSA, and subsequent charges laid under the *Criminal Code*. These matters qualify as law enforcement matters as they involve police officers’ duties under PA, MHSA and the *Criminal Code*.

- [48] I find that law enforcement matters are involved. Therefore, the first part of the test has been met.

2. Could the release of information disclose information with respect to a law enforcement matter?

- [49] With respect to the second part of the test, SPS asserted:

The portions of the record withheld pursuant to subsection 14(1)(k) include internal communication between SPS staff in relation to the file, as well as details left by officers about discussions had with third parties, including discussions about serving the Applicant with court documents and notes to the Crown, which qualifies as a law enforcement matter.

- [50] I find that the second part of the test has been met in relation to SPS' claim that subsection 14(1)(k) of LA FOIP applies to portions of Record 1 pages 5, 6, 7, 13, 18, 19, and 29. Release of this information would disclose information with respect to the law enforcement matters.

- [51] Therefore, I find that SPS properly applied subsection 14(1)(k) of LA FOIP to the information described in paragraph [37] above, with the exception of Record 1 page 21 which I will address below. I recommend that SPS continue to withhold this information pursuant to subsection 14(1)(k) of LA FOIP.

- [52] SPS' submission asserted that the information contained on page 21 of Record 1 is exempt in full. SPS stated that this information qualifies as a "law enforcement matter" and the second part of the test has been met.

- [53] Based on a review of the record, I note that it contains the Applicant's personal information. I also note that it does not include any information about the role or actions of the Applicant, the type of incident that they were engaged in, and the related activities of the SPS' officers. I find that Record 1 page 21 does not meet the second part of the test, because the release of this record would not disclose any information about the law enforcement matters in which SPS' officers and the Applicant were engaged.

[54] Therefore, I find that SPS did not properly apply subsection 14(1)(k) of LA FOIP to Record 1 page 21. As no other exemptions have been claimed for Record 1 page 21, I recommend that SPS release it to the Applicant.

6. Did SPS properly apply section 20 of LA FOIP?

[55] SPS applied section 20 of LA FOIP to Records 4 and 5 in full. This is a discretionary exemption that 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, at p. 214).

[56] Section 20 of LA FOIP provides as follows:

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.

[57] 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, at p. 215).

[58] To “threaten” means to be likely to injure; be a source of harm or danger to. It means to create the possibility or risk of harm or jeopardize an individual’s safety or mental or physical wellbeing (*Guide to LA FOIP*, Ch. 4, at p. 216).

[59] “Safety” means the state of being protected from or guarded against hurt or injury; freedom from danger (*Guide to LA FOIP*, Ch. 4, at p. 216).

[60] “Mental health” means the condition of a person in respect of the functioning of the mind. It means the ability of a person’s mind to function in its normal state. Determination of the effect of a release of information on a person’s mental health must, where practicable, be based on a subjective evaluation made on a case-by-case basis.

[61] SPS provided detailed information describing the harm that may result from the release of this information. It explained that SPS' Access and Privacy Unit obtained the advice of an in-house psychologist during the processing of the request that I have taken into consideration. Based on a review of the records and SPS' submission, I find that SPS properly applied section 20 of LA FOIP to Records 4 and 5. I recommend that SPS continue to withhold these records pursuant to section 20 of LA FOIP.

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

[62] I found above that SPS properly applied subsection 14(1)(c) of LA FOIP to portions of Records 1 and 2, and all of Record 3. Therefore, I need only consider if SPS properly applied subsection 28(1) of LA FOIP to the following pages:

- Record 1 pages 2, 3, 4, 8, 9, 10, 11, 12, 13, 18, 19, 24, 26, 27, 28, 31, 35, 38 and 40
- Record 2 pages 1 and 4.

[63] 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.

[64] In order for subsection 28(1) of LA FOIP to apply, I must first find that the information constitutes third party "personal information." Subsection 23(1) of LA FOIP defines "personal information" and provides some examples of the types of information that can be considered personal information. The following subsections are relevant in this review:

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;

...

(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.

[65] The list of examples of personal information in subsection 23(1) of LA FOIP is not exhaustive. To determine if the information is personal information, it must, 1) be about an identifiable individual, and 2) be personal in nature.

[66] The information withheld from Records 1 and 2 includes complainants' and victims' name, sex, date of birth, family relationship, ethnicity, injuries, personal contact details and other personal information about them. This information appears at:

- Record 1 pages 2 (severances 1 to 8), 3 (severances 1 to 13), 4 (severances 2 and 3), 8 (severance 1), 11 (severance 5), 18 (severance 1), 19 (severance 1), 26 (severance 5), and 27 (severances 2 and 3)
- Record 2 pages 1 (severances 2-5), and 4 (severance 4).

[67] The information described in paragraph [66] above qualifies as personal information of individuals other than the Applicant pursuant to subsections 23(1)(a), (c), (e) and (k) of LA FOIP. Therefore, I find that SPS properly applied subsection 28(1) of LA FOIP to this information. I recommend that SPS continue to withhold this information pursuant to subsection 28(1) of LA FOIP.

Absurd Result

[68] SPS withheld information from Record 1 pages 10 (severances 1-4), 12 (severance 1), 13 (severances 1 and 2), 26 (severances 1-4), 28 (severance 1), and 31 (severance 1) that was provided to it by the Applicant.

[69] SPS also withheld names of individuals that would have been within the knowledge of the Applicant. The names appear in Record 1 pages:

- 35 (severance 1 - name of an individual whose identity the Applicant is alleged to have assumed);
- 38 (severances 1 and 2 - names of two victims of alleged crimes involving the Applicant); and
- 40 (severances 1 and 2 - name of an individual who is the subject of a no-contact order involving the Applicant).

[70] The Applicant would have been aware of these individuals' names, and their involvement in the related incidents because of the Applicant's involvement in the same incidents. In the case of Record 1 page 40, the Applicant would have been aware of the individual's name given that, as shown by the portions of this page released to the Applicant, a court order was issued requiring that they have no contact with the named individual.

[71] When determining if exemptions in LA FOIP apply, local authorities should consider whether applying the exemption would give rise to an absurd result. This is based on a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. As set out in my office's *Guide to LA FOIP*, the presumption against absurdity was described by the Supreme Court of Canada in *Rizzo v. Rizzo Shoes Ltd. (re)*, (1998) as follows:

[27] It is a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. According to [Pierre-Andre Cote, *The Interpretation of Legislation in Canada* (2nd ed. 1991)] an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with

other provisions or with the object of the legislative enactment (at pp. 378-80). Sullivan echoes these comments noting that a label of absurdity can be attached to some interpretations which defeat the purpose of a statute or render some aspect of it pointless or futile (Sullivan, *Construction of Statutes*, *supra* at p. 88).

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

[72] In previous reports of my office (see for example, my office's Review Reports [215-2020](#), [171-2019](#), and [164-2021](#)), I have found that the absurd result principle applies where:

- the requester provided the information to the government institution
- the requester was present when the information was presented to the public body and
- the information is clearly within the requester's knowledge.

[73] Further information about the application of the absurd result principle can be found in my office's blogs, [Absurd Result](#) and [Absurd Result II](#).

[74] As I have found that the information described in paragraphs [68] and [69] above was either provided to SPS by the Applicant or known to the Applicant, I find that the absurd result principle applies to this information. Accordingly, SPS did not properly apply subsection 28(1) of LA FOIP to this information. As no other exemptions have been claimed for this information, I recommend that SPS release it to the Applicant.

8. Did SPS properly apply subsection 13(1)(b) of LA FOIP?

[75] SPS applied subsection 13(1)(b) of LA FOIP to Record 1 pages 42 and 43 in full. Subsection 13(1)(b) of LA FOIP is a mandatory exemption. It requires a local authority to withhold information it obtained in confidence, either implicitly or explicitly, from the Government of Saskatchewan or government institutions unless one of the exceptions applies.

[76] Subsection 13(1)(b) of LA FOIP provides:

13(1) A head shall refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from:

...

(b) the Government of Saskatchewan or a government institution;

...

unless the government or institution from which the information was obtained consents to the disclosure or makes the information public.

[77] To determine if subsection 13(1)(b) of LA FOIP applies, my office applies the following three-part test,

1. Was the information obtained from the Government of Saskatchewan or its agencies, Crown corporations or other institutions?
2. Was the information obtained implicitly or explicitly in confidence?
3. Is there consent to disclose the information or has the information been made public?

(Guide to LA FOIP, Ch. 4, at pp. 22 to 25)

1. Was the information obtained from the Government of Saskatchewan or its agencies, Crown Corporations or other institutions?

[78] “Obtained” means to acquire in any way; to get possession of; to procure; or to get a hold of by effort. A local authority may obtain information either directly or indirectly from a government institution, but to obtain it implies that the local authority did not create the information (*Guide to LA FOIP, Ch. 4, at p. 22*).

[79] Record 1 pages 42 and 43 are copies of two orders obtained from the Ministry of Corrections, Policing, and Public Safety (Corrections). Corrections qualifies as a government institution pursuant to subsections 2(d) of LA FOIP and 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act*. Therefore, the first part of the test has been met.

2. *Was the information obtained implicitly or explicitly in confidence?*

3. *Is there consent to disclose the information or has the information been made public?*

[80] SPS asserted that the orders were provided implicitly in confidence. It also asserted disclosure could impair its ability to obtain similar information in the future. It added that a reasonable person would regard the orders to be confidential and SPS' practice is to keep these records confidential.

[81] The orders at issue here include formal or official restrictions applied to the Applicant relating to their probation. SPS stated that the orders indicate that they were "completed by phone" and "verbally instructed," so the Applicant may not have ever seen the forms or received a copy. However, I find that given the nature of the orders and the information they contain, it is apparent that the Applicant would have been made aware of their existence and contents. The Applicant couldn't reasonably be expected to comply with orders that include restrictions that they are not aware of.

[82] Given that the Applicant would be aware of the information contained in the orders, it would be absurd to find that they were exempt pursuant to subsection 13(1)(b) of LA FOIP in the context of an access to information request made by them. Therefore, applying the absurd result principle discussed above, I find that SPS did not properly apply subsection 13(1)(b) of LA FOIP to Record 1 pages 42 and 43. As no other exemptions have been claimed for this information, I recommend that SPS release it to the Applicant.

IV FINDINGS

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

[84] I find that SPS conducted a reasonable search for records.

[85] I find that Record 2 pages 5 (severances 3 to 7) and 6 (severances 1 and 2) are not responsive to the Applicant's access to information request.

- [86] I find that SPS properly applied subsection 14(1)(c) of LA FOIP to the severances described in paragraph [26] above.
- [87] I find that SPS properly applied subsection 14(1)(j) of LA FOIP to the information described in paragraph [36] above.
- [88] I find that SPS did not properly apply subsection 14(1)(k) of LA FOIP to Record 1 page 21.
- [89] I find that SPS properly applied subsection 14(1)(k) of LA FOIP to the information described in paragraph [37] above except for Record 1 page 21.
- [90] I find that SPS properly applied section 20 of LA FOIP to Records 4 and 5.
- [91] I find that SPS properly applied subsection 28(1) of LA FOIP to the information described in paragraph [66] above.
- [92] I find that SPS did not properly apply subsection 28(1) of LA FOIP to the information described in paragraphs [68] and [69] above.
- [93] I find that SPS did not properly apply subsection 13(1)(b) of LA FOIP to Record 1 pages 42 and 43.

V RECOMMENDATIONS

- [94] I recommend that SPS take no further action in relation to its search for records.
- [95] I recommend that SPS consider releasing the non-responsive portions of Record 1 to the Applicant, subject to any exemptions that may apply, within 30 days.

- [96] I recommend that SPS continue to withhold the information that it found to be exempt pursuant to section 20 and subsections 14(1)(c) and (j) of LA FOIP.
- [97] I recommend that SPS continue to withhold the information that it found to be exempt pursuant to subsection 14(1)(k) of LA FOIP, other than Record 1 page 21.
- [98] I recommend that SPS release to the Applicant Record 1 page 21 within 30 days.
- [99] I recommend that SPS continue to withhold the information described in paragraph [66] above.
- [100] I recommend that SPS release to the Applicant the information described in paragraphs [68] and [69] above within 30 days.
- [101] I recommend that SPS release Record 1 pages 42 and 43 to the Applicant within 30 days.

Dated at Regina, in the Province of Saskatchewan, this 18th day of January, 2023.

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