



REVIEW REPORT 119-2022

City of Saskatoon

March 7, 2023

Summary: The Applicant submitted an access to information request to the City of Saskatoon (City). The City responded and indicated it was providing access to some of the records, but withholding others pursuant to subsections 28(1), 16(1)(b) and 21(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant appealed to the Commissioner. The Commissioner found that subsection 28(1) of LA FOIP did not apply. He also found that subsections 16(1)(b), 21(c), and 21(a) of LA FOIP applied in some cases, but not all. He set out his findings and recommendations in the Appendix of this Report.

I BACKGROUND

[1] On June 25, 2021, the City of Saskatoon (City) received the following access to information request from the Applicant:

Someone at the City of Saskatoon posted a series of tweets to social media on or about [date redacted] which included this statement “[quote of tweet]”. After which the City actively blocked me from seeing this personally (but while still publicly visible to everyone else) and then also blocked me on the Saskatoon Fire, EMO, and general City of Saskatoon twitter accounts. No one has identified who authorized this action. To this day, no one will identify what “facts are wrong or inaccurate” even when questioned by the press on this fact. I want all communication tied to my personal name from all departments including, but not limited to, the City Manager, the City Solicitor, the City Fire Chief, the City EMO, the Director of Planning and Development, the Mayor’s Office, City Public Affairs, and any in house media personnel as this relates to the derogatory statements against me, and who(m) approved the decision to personally block me for asking relevant and accurate questions of the City.

- [2] The Applicant specified the time period of the responsive records to be “1 thru 15 May 21 inclusive”.
- [3] On July 30, 2021, the City responded to the Applicant. The City granted the Applicant access to some of the responsive records, but refused the Applicant access to portions of the records. It cited subsections 28(1), 16(1)(b) and 21(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) as its reasons for the refusal.
- [4] On June 15, 2022, the Applicant requested a review by my office.
- [5] On July 13, 2022, my office notified the City and the Applicant that my office would be undertaking a review.
- [6] On July 21, 2022, the Applicant provided a submission to my office.
- [7] On August 12, 2022, the City provided my office with a copy of the records at issue. However, the portions of the records at issue to which it applied subsection 21(c) of LA FOIP remained redacted. The City also provided an index of records and a signed affidavit.
- [8] On September 19, 2022, the City released additional portions of the responsive record to the Applicant. It informed the Applicant that “a number of severances under 16(1)(b) have been removed.”
- [9] On September 20, 2022, the City provided my office with a submission.
- [10] On September 20, 2022, the City provided my office with a copy of the responsive records that showed where it had released additional portions to the Applicant.
- [11] On February 24, 2023, the City provided my office with a copy of an updated submission and responsive records.

II RECORDS AT ISSUE

[12] At issue are 243 pages of emails withheld in part. Due to size, the City broke down the pages into two different PDF files. The first PDF file (herein referred to as Part 1 records) contains 204 pages of emails while the second (herein referred to as Part 2 records) contains 39 pages of emails.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

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

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

[14] The City applied subsection 16(1)(b) of LA FOIP to portions of pages 1 to 3, 26, 29 to 30, 32 to 33, 39 to 40, 42 to 43, 46 to 53, 55 to 56, 59 to 60, 62 to 64, 67 to 74, 77 to 82, 84, 86 to 92, 94 to 97, 100 to 102, 104 to 107, 109, 111 to 112, 114, 116, 119, 120, 124 to 127, 129 to 130, 132 to 138, 140 to 142, 144 to 145, 150, 152 to 153, 158, 160, 162 to 170 of the Part 1 records.

[15] 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

[16] 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*, Chapter 4, “Exemptions from the Right of Access”, updated April 29, 2021 [*Guide to FOIP*, Ch. 4], pp. 113-114)

[17] The following is an analysis to determine if the two-part test is met.

1. Does the record contain consultations or deliberations?

[18] “Consultation” means the action of consulting or taking counsel together: deliberation, conference. It is a conference in which parties consult and deliberation. A consultation can occur when the views of one or more officers or employees of a local authority are sought as to the appropriateness of a particular proposal or suggested action. It can include consultations about prospective future actions and outcomes in response to a developing situation. It can also include past courses of action. For example, where an employer is considering what to do with an employee in the future, what has been done in the past can be summarized and would qualify as part of the consultation or deliberation (*Guide to LA FOIP*, Ch. 4, p. 113).

[19] “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. 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).

[20] In its submission, the City broke down the pages to which it applied subsection 16(1)(b) of LA FOIP into eight groups. For each group, the City provided arguments as to how the information within each group qualified as “consultations” or “deliberations”. Throughout its arguments, the City characterized the redacted content as “discussions” and/or “correspondence” among staff. For example, for pages 125 to 127 contains an email from the City’s Media Relations Manager to the City Solicitor. Based on the contents, it appears

that the Media Relations Manager is seeking the view of the City Solicitor regarding the appropriateness of a proposed response to the media. I find that such content to qualify as a “consultation”.

[21] However, in other places where the City applied subsection 16(1)(b) of LA FOIP, there is content that I do not find to qualify as “consultations” or “deliberations”. For example, at pages 94, 100, and 104, the City’s Social Media Consultant II describes action that was taken in an email to other staff. Such content does not qualify as a “consultation” or “deliberation” as defined earlier.

[22] Further, pages 63, 74, 92, 120, 124, and 132 appears to contain “advice” from the City’s Social Media Consultant II to the Media Relations Manager and City Solicitor. “Advice” is a type of information that can be exempted from disclosure pursuant to subsection 16(1)(a) (not subsection 16(1)(b)) of LA FOIP. “Advice” includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take (*Guide to LA FOIP*, Ch. 4, p. 106). Since the City did not cite subsection 16(1)(a) of LA FOIP as its reason for withholding such information, I will not consider that exemption in this review. However, I find that the redacted information in these pages do not qualify as “consultations” or “deliberations”. As such, the first part of the test is not met for these pages.

[23] Before I proceed, I must note that I have seen confusion among local authorities regarding when to apply subsection 16(1)(a) of LA FOIP versus when to apply subsection 16(1)(b) of LA FOIP. Subsections 24(1)(a) and (b) of Alberta’s *Freedom of Information and Protection of Privacy Act* (AB FOIP) are similar to subsections 16(1)(a) and (b) of LA FOIP. An adjudicator from Alberta’s Office of the Information and Privacy Commissioner (AB IPC) distinguished subsections 24(1)(a) and (b) of AB FOIP in Order F2013-13 as follows:

[para 146] I agree with the interpretation Commissioner Clark assigned to the terms “consultation” and “deliberation” generally. **However, as I stated in Order F2012-10, section 24(1)(b) differs from the section 24(1)(a) in that section 24(1)(a) is intended to protect communications developed for a public body by an advisor, while section 24(1)(b) protects communications involving decision makers. That this is so is supported by the use of the word deliberation: only a person charged with making a decision can be said to deliberate that decision. Moreover, “consultation” typically refers to the act of seeking advice regarding an action one is considering taking, but not to giving advice in relation to it. Information that is the subject of section 24(1)(a) may be voluntarily or spontaneously provided to a decision maker for the decision maker’s use because it is the responsibility of an employee to provide information of this kind; however, such information cannot be described as a “consultation” or a “deliberation”. Put simply, section 24(1)(a) is concerned with the situation where advice is given, section 24(1)(b) is concerned with the situation where advice is sought or considered.**

[Emphasis added]

[24] I take a similar interpretation as AB IPC. Subsection 16(1)(a) of LA FOIP is intended to protect communications developed for the local authority by an advisor whereas subsection 16(1)(b) of LA FOIP protects communication involving decision makers. “Consultations” involve the seeking of advice, but not the giving of advice. I recommend that the City make note of that distinction going forward in its processing of access to information requests.

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

[25] “Involving” means including (*Guide to LA FOIP*, Ch. 4, p. 114).

[26] “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).

[27] Based on a review of the records to which I found the first part of the two-part test is met, I note that the consultations involve officers or employees of the local authority.

[28] Please see the Appendix for my findings and recommendations.

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

[29] My office's [Rules of Procedure, Part 9: Solicitor-Client or Litigation Privilege](#) (revised December 2022) at page 32 outlines the process a local authority is to follow when claiming solicitor-client or litigation privilege:

9-1 Claiming Solicitor-Client or Litigation Privilege

(1) Where solicitor-client or litigation privilege is being claimed as an exemption by the head or delegate, the commissioner's office will request the head or delegate to provide a copy of the records, or an affidavit of records, schedule and redacted record over which solicitor-client or litigation privilege is claimed setting out the elements requested in Form B.

[30] For this review, the City provided my office with a copy of the records at issue.

[31] The City applied subsection 21(a) of LA FOIP to portions of pages 52 to 53, 55 to 56, 59 to 60, 61 to 64, 69 to 75, 80 to 82, 86 to 93, 114 to 121, 125 to 130, 132, 134, 136 to 138, 157 to 158, 161 to 169. In some cases where the City applied subsection 21(a) of LA FOIP (such as pages 125 to 127), I have already found that subsection 16(1)(b) of LA FOIP applies to it. Therefore, I will not consider those pages here.

[32] Subsection 21(a) of LA FOIP provides:

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

(a) contains any information that is subject to any privilege that is available at law, including solicitor-client privilege;

[33] My office uses the following three-part test to determine if subsection 21(a) of LA FOIP applies:

1. Is the record a communication between solicitor and client?
2. Does the communication entail the seeking or giving of legal advice?
3. Did the parties intend for the communication to be treated confidentially?

(Guide to LA FOIP, Ch. 4, pp. 221-225)

[34] The following is my analysis to determine if the three-part test is met.

1. Is the record a communication between solicitor and client?

[35] A “communication” is the process of bringing an idea to another’s perception; the message or ideas so expressed or exchanged; the interchange of messages or ideas by speech, writing, gestures or conduct (*Guide to LA FOIP, Ch. 4, p. 221*).

[36] A “client” means a person who consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services; or having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on their behalf. It includes a client of the law firm in which the lawyer is a partner or associate, whether the lawyer handles the client’s work (*Guide to LA FOIP, Ch. 4, p. 222*).

[37] A “lawyer” means a member of the Law Society and includes a law student registered in the Society’s pre-call program (*Guide to LA FOIP, Ch. 4, p. 222*).

[38] The local authority should make it clear who the solicitor is and who the client is.

[39] First, I note the records to which the City applied subsection 21(a) of LA FOIP are emails, which qualifies as a “communication”.

[40] Next, in its submission, the City said:

- Staff of the local authority are directly requesting the legal advice of The [sic] City Solicitor.

[41] Based on the above, the City is identifying the City Solicitor as the solicitor and the City as the client.

[42] I find that the first part of the test is met.

2. Does the communication entail the seeking or giving of legal advice?

[43] “Legal advice” means a legal opinion about a legal issue and a recommended course of action, based on legal considerations, regarding a matter with legal implications (*Guide to LA FOIP*, Ch. 4, p. 224).

[44] In its submission, the City asserted that it applied subsection 21(a) of LA FOIP to the following types of records:

- Staff of the local authority are directly requesting the legal advice of the City Solicitor;
- The City Solicitor is providing legal advice to the staff of the local authority on the recommended course of action, providing feedback on draft messages and/or requesting additional advice of the Senior Solicitor also included in the correspondence; and/or
- Staff of the local authority requesting that the City Solicitor provide comment/feedback and or approval of draft messages from a legal perspective before releasing the messaging to the public (via social media or through response to the media).

[45] Pages 55 to 56, 61, 72, 80 to 82, 89 to 90, 117 to 118 contains correspondence between the City Solicitor and City staff where legal advice is either sought or given. I find that the second part of the test is met for pages 55 to 56, 61, 72, 80 to 82, 89 to 90, 117 to 118.

[46] However, there are pages to which the City applied subsection 21(a) of LA FOIP that I do not find there is the seeking or giving of legal advice. In my office’s [Review Report 171-2019](#), I cited [R. v Campbell, 1999 CanLII 676 \(SCC\), \[1999\] 1 SCR 565 \(R v. Campbell\)](#). The Supreme Court of Canada provided that not everything done by a government (or other) lawyer attracts the solicitor-client privilege:

It is, of course, not everything done by a government (or other) lawyer that attracts solicitor-client privilege. While some of what government lawyers do is indistinguishable from the work of private practitioners, they may and frequently do have multiple responsibilities including, for example, participation in various operating committees of their respective departments. Government lawyers who have spent years with a particular client department may be called upon to offer policy advice that has

nothing to do with their legal training or expertise, but draws on departmental know-how. Advice given by lawyers on matters outside the solicitor-client relationship is not protected.

[47] Examples of such pages include pages 64, 75, 93 and 121. These pages contain an email dated May 5, 2021 (timestamped 3:32 p.m.) where the City Solicitor asks the Media Relations Manager if the City has the ability to complete a certain action. Such an exchange does not entail the seeking or giving of legal advice.

[48] Another example of email exchanges that do not contain the seeking or giving of legal advice is at page 86. The City Solicitor expresses agreement with a specific proposed action and instructs an employee to complete a task. Similarly at pages 91 and 119, there is an email where the City Solicitor expresses agreement with a proposed action by an employee. There does not appear to be the giving or seeking of legal advice in the email.

[49] See the Appendix for my findings and recommendations.

4. Did the City properly apply subsection 21(c) of LA FOIP?

[50] The City applied subsection 21(c) of LA FOIP to portions of pages 6 to 7, 51, 68, 77 to 79, 84, 94, 100, 104, 114, 138, 144 and 157 of the Part 1 records. It also applied subsection 21(c) of LA FOIP to a portion of page 11 of the Part 2 records. Earlier, I have already found either subsections 16(1)(b) or 21(a) of LA FOIP applied to some of these pages. Therefore, I will only consider the remaining pages here.

[51] Subsection 21(c) of LA FOIP provides:

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

...

(c) contains correspondence between legal counsel for the local authority and any other person in relation to a matter involving the provision of advice or other services by legal counsel.

[52] My office uses the following two-part test to determine if subsection 21(c) of LA FOIP applies:

1. Is the record a correspondence between the local authority's legal counsel and any other person?
2. Does the correspondence relate to a matter that involves the provision of advice or other services by legal counsel?

(Guide to LA FOIP, Ch. 4, p. 239)

[53] The following is an analysis to determine if the two-part test is met.

1. Is the record a correspondence between the local authority's legal counsel and any other person?

[54] "Correspondence" means letters sent or received. It is an interchange of written communication. A memorandum or note from one employee of a local authority to another summarizing a conversation between that employee and the local authority's lawyer may meet the criteria for this provision (*Guide to LA FOIP, Ch. 4, p. 239*).

[55] "Agent" means someone who is authorized to act for or in place of another (*Guide to LA FOIP, Ch. 4, p. 239*).

[56] "Any other person" was an intentional and inclusive phrase to capture just that – any other person. The local authority must make it sufficiently clear, as to what the nature of that other person's role in the correspondence was (*Guide to LA FOIP, Ch. 4, p. 239*).

[57] Some of the pages to which the City applied subsection 21(c) of LA FOIP are emails directly between the City Solicitor and/or the Senior Solicitor and City staff. These include emails found on pages 84, 114, and 144 of the Part 1 records and the email exchanges on page 11 of the Part 2 records.

[58] Pages 6 to 7 is a letter from a solicitor at the City to a planning consultant at the Ministry of Government Relations.

[59] Finally, many of the pages to which the City applied subsection 21(c) of LA FOIP are emails between City employees that summarize a conversation between a City employee and the City's solicitor. These pages include pages 51, 77, 78, 79, 94, and 104 of the Part 1 records.

[60] I find that the first part of the test is met.

2. Does the correspondence relate to a matter that involves the provision of advice or other services by legal counsel?

[61] "In relation to" has been found to have a similar meaning as "in respect of". As noted at page 239 of Chapter 4 of my office's *Guide to LA FOIP*, the Supreme Court of Canada's decision *Nowegijick v. The Queen*, [1983] 1SCR 29, 1983 (SCC) at paragraph [30] says:

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, p. 239)

[62] Earlier, I have already provided the definition of "legal advice" in my analysis of subsection 21(a) of LA FOIP. "Legal service" includes a law-related service performed by a person engaged by a local authority and who is licensed to practice law (*Guide to LA FOIP*, Ch. 4, p. 240).

[63] In its submission, the City described the records to which it applied subsection 21(c) of LA FOIP as follows:

- Solicitor advice and legal opinions were sought throughout the consultations and deliberations on the response to the developing social media situation as well as during the formulation of response to media outlets regarding the situation and eventual outcome of the situation.
- In the severance listed above, the advice of the solicitors was inferred, repeated, or discussed. Two exceptions include:

- The City Solicitor's Office providing information to the Government of Saskatchewan regarding the legal position of the City of Saskatoon ([redaction] #7).
- The information was being conveyed to the City Solicitor for information purposes, but her advice was not being sought ([redaction] #106).

[64] Based on a review, I find that the second part of the test is met for the following pages:

- Pages 6 to 7 of the Part 1 records – The redacted contents is a letter from a solicitor at the City to a planning consultant at the Ministry of Government Relations. Based on a review of the letter, the letter relates to a matter that involves the provision of a legal service by the solicitor.
- Pages 51 and 79 of the Part 1 records features an email dated May 5, 2021, from the Director of Communications to the Social Media Consultant II and the Media Relations Manager. The Director describes a conversation they had with the City Solicitor about a particular course of action.
- Page 77 of the Part 1 records features an email dated May 6, 2021, from the Social Media Consultant II to the Director of Communications. The last two sentences of the first paragraph summarizes advice offered by the City Solicitor.
- Page 78 of the Part 1 records features an email dated May 6, 2021, from the Social Media Consultant II to the Director of Communications. The second sentence summarizes the recommended action by the City Solicitor.
- Pages 94 and 104 of the Part 1 records features an email dated May 6, 2021, from Social Media Consultant II to other City staff. The first sentence of the paragraph summarizes advice from the City Solicitor.
- Page 11 of Part 2 records features email exchanges from City Solicitor and Senior Solicitor with the Media Relations Manager. The contents of the emails contain advice from both solicitors to the Media Relations Manager.

[65] However, I find that the second part of the test is not met for the following pages:

- Page 84 of the Part 1 records features an email dated May 6, 2021, from the Social Media Consultant II to the City Solicitor and Media Relations Manager. The email states what has happened. It does appear to relate to a matter that involves the provision of advice or other services by the City Solicitor.

- Page 114 of the Part 1 records features an email dated May 6, 2021 (timestamped 9:30 a.m.). The City Solicitor expresses agreement with a specific proposed action and instructs an employee to complete a task. The email does not appear to relate to a matter that involves the provision of advice or other services by the City Solicitor.
- Page 144 of the Part 1 records features an email dated May 10, 2021, from the City Solicitor to the Media Relations Manager. The email summarizes action taken but does not appear to relate to a matter that involves the provision of advice or other services by the City Solicitor.

[66] My findings and recommendations are set out in the Appendix.

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

[67] The City applied subsection 28(1) of LA FOIP to portions of pages 30 and 67 of the Part 1 records. These pages contain images of instant messages between City employees. The images of the City's employees appear at the header of each instant message.

[68] 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.

[69] In order for subsection 28(1) of LA FOIP to apply, the withheld information must qualify as a third party's "personal information" as defined by subsection 23(1) of LA FOIP.

[70] Subsection 23(1) of LA FOIP defines "**personal information**", in part, 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:

...

[71] In order for information to qualify as "personal information", two elements must be present:

1. The information must be about an identifiable individual; and

2. The information must be personal in nature.

(*Guide to LA FOIP*, Chapter 6 “Protection of Privacy”, Updated January 18, 2023
[*Guide to FOIP*, Ch. 6], p. 32)

[72] Therefore, I must determine if the image of City employees on City records qualify as “personal information” as defined by subsection 23(1) of LA FOIP.

[73] In my office’s [Investigation Report 034-2018](#), I had determined that photographs of employees qualify as “personal information” as defined by subsection 24(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Therefore, government institutions subject to FOIP must ensure it has authority under FOIP to collect their employees’ photographs. In that case, the government institution relied on consent in order to collect their employees’ photographs, although I had found that the purposes stated in the consent form to be overly broad.

[74] Similarly, in this case, I find that employee’s photographs qualify as “personal information” as defined by subsection 23(1) of LA FOIP. In its submission, the City explained that individual employees “approve” of their photographs for the City’s internal communication systems. It said:

Correspondence includes photos of staff members of the local authority. Photos of City of Saskatoon staff are not approved for release outside of use within internal communication systems as approved by individual whose picture is displayed.

[75] Therefore, it appears that the City is relying on employee consent to collect their photographs for use within the City’s internal communication systems.

[76] However, the City’s practice of not releasing photographs of its employees that appear in their records is not grounded in LA FOIP. LA FOIP applies to the records in the possession or under the control of the City. As such, any person may exercise their right pursuant to section 5 of LA FOIP to request access to such records.

[77] Therefore, prior to collecting an employee's consent to collect their photograph, the City should provide a notice to its employees that by uploading a photograph, their photo becomes parts of records that are subject to LA FOIP. This would include their photographs being released to the public through an access to information request. As such, if employees do not want their photograph released, then they may make a decision to not upload their photograph to the City's "internal communication systems" in the first place.

[78] Once the City collected the photographs, the nature of the photograph shifts from personal information into work product. In [Beniey v. Canada \(Public Safety and Emergency Preparedness\), 2021 FC 164](#) (CanLII) (*Beniey v. Canada*), the Federal Court determined that the images of faces of a government institution's employees while in uniform and on duty for their employer did not qualify as personal information pursuant to paragraph 3(j) of the federal *Privacy Act*. Paragraph 3(j) of the *Privacy Act* provides:

3 In this Act,

...

personal information means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,

...

but, for the purposes of sections 7, 8 and 26 and section 19 of the *Access to Information Act*, does not include

(j) **information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,**

(i) the fact that the individual is or was an officer or employee of the government institution,

(ii) the title, business address and telephone number of the individual,

(iii) the classification, salary range and **responsibilities of the position held by the individual,**

(iv) the name of the individual on a document prepared by the individual in the course of employment, and

(v) the personal opinions or views of the individual given in the course of employment,...

[Emphasis added]

[79] The Federal Court in *Beniey v. Canada* said that the images of employees are information concerning the nature of responsibilities of the position:

[34] **In my opinion, it is difficult to imagine how the image of a border services officer, taken while the officer is in uniform and on duty for his or her employer, could be excluded from the scope of paragraph 3(j) of the PA.**

[35] A distinction should also be made between information on a video recording taken when an employee arrived and left work and information on the employee's sign-in logs. In both cases, although "this information may not disclose anything about the nature of the responsibilities of the position, it does provide a general indication of the extent of those responsibilities" (*Dagg* at paragraph 9). Even more importantly, **I find it difficult to see how images taken while border officers exercise their duties would not be information concerning the nature of the responsibilities of the position.**

...

[43] Since I have come to the conclusion that the Agency erred in its interpretation of paragraph 3(j) of the PA and, consequently, of section 19 of the ATIA, the debate surrounding the application of section 25 of the ATIA is for all intents and purposes moot. **The faces of the Agency's employees do not need to be redacted whereas those of members of the public appearing in the videos given to the applicant have already been covered with black boxes. It is therefore possible for the Agency to do the same with the additional video recordings that will be given to the applicant.**

[Emphasis added]

[80] Similar to paragraph 3(j) of the federal *Privacy Act*, I note that subsection 23(2) of LA FOIP carves out certain information regarding employees from the definition of "personal information". It says:

23(2) "Personal information" does not include information that discloses:

(a) the classification, salary, discretionary benefits or **employment responsibilities of an individual who is or was an officer or employee of a local authority;**

[Emphasis added]

[81] Based on *Beniey v. Canada* and subsection 23(2) of LA FOIP, I find that the images of City employees that appear in the header of instant messages used in this workplace context to not qualify as “personal information”. The City employees are carrying out their employment responsibilities in the instant message exchanges. As such, the photographs that appear on pages 30 and 67 should not be exempt from disclosure pursuant to subsection 28(1) of LA FOIP. I find the City did not properly apply subsection 28(1) of LA FOIP to these photographs on pages 30 and 67 of the Part 1 Records.

IV FINDINGS

[82] I find that I have jurisdiction to undertake this review.

[83] I find the City did not properly apply subsection 28(1) of LA FOIP to these photos on pages 30 and 67 of the Part 1 Records.

[84] The remainder of my findings appear in the Appendix.

V RECOMMENDATIONS

[85] I recommend within 30 days, that the City comply with the recommendations set out in the Appendix.

[86] I recommend within 30 days, that the City provide a notice to its employees that by uploading a photo of themselves to “internal communication systems”, their photo becomes parts of records that are subject to LA FOIP. This may include their photos being released to the public. As such, if employees wish for their photo not to be released, then they may make a decision to not upload their photo to the City’s “internal communication systems”.

Dated at Regina, in the Province of Saskatchewan, this 7th day of March, 2023.

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

Appendix

Part 1 Records

Page Number	Redaction Number	Exemptions applied by the City	IPC Findings	IPC Recommendations
1	1	16(1)(b) of LA FOIP	16(1) of LA FOIP does not apply	Release
1	2	16(1)(b) of LA FOIP	16(1) of LA FOIP applies	Continue to withhold
2	3	16(1)(b) of LA FOIP	16(1) of LA FOIP does not apply	Release
2	4	16(1)(b) of LA FOIP	16(1) of LA FOIP does not apply	Release
2	5	16(1)(b) of LA FOIP	16(1) of LA FOIP applies	Continue to withhold
3	6	16(1)(b) of LA FOIP	16(1) of LA FOIP applies	Continue to withhold
4 to 5	Released			
6	7	21(c) of LA FOIP	21(c) of LA FOIP applies	Continue to withhold
7	7	21(c) of LA FOIP	21(c) of LA FOIP applies	Continue to withhold
8 to 25	Released			
26	8 to 13	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
27 to 28	Released			
29	14 to 17	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
29	18 to 20	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
29 to 30	21 to 22	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
30	23 to 28	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
30	29 to 32	28(1) of LA FOIP	28(1) of LA FOIP does not apply.	Release
31	Released			

32	33	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
32	34	16(1)(b) of LA FOIP	16(1) of LA FOIP applies	Continue to withhold
32	35	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
33	36	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
33	37	16(1)(b) of LA FOIP	16(1) of LA FOIP applies	Continue to withhold
33	38	16(1)(b) of LA FOIP	16(1) of LA FOIP applies	Continue to withhold
34 to 38	Released			
39	39	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
39	40	16(1)(b) of LA FOIP	16(1) of LA FOIP applies	Continue to withhold
39	41	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
39	42	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
40	43	16(1)(b) of LA FOIP	16(1) of LA FOIP applies	Continue to withhold
40	44	16(1)(b) of LA FOIP	16(1) of LA FOIP applies	Continue to withhold
41				
42	45	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
42	46	16(1)(b) of LA FOIP	16(1) of LA FOIP applies	Continue to withhold
43	47	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
43	48	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
43	49	16(1)(b) of LA FOIP	16(1) of LA FOIP applies	Continue to withhold
43	50	16(1)(b) of LA FOIP	16(1) of LA FOIP applies	Continue to withhold

44 to 45	Released			
46	51	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
46	52	16(1)(b) of LA FOIP		
47	53	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
47	54	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
47	55	16(1)(b) of LA FOIP		
48	56	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
49	57	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
49	58	16(1)(b) of LA FOIP		
50	59	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
50	60	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
50	61	16(1)(b) of LA FOIP	16(1) of LA FOIP applies	Continue to withhold
50	62	16(1)(b) of LA FOIP	16(1) of LA FOIP applies	Continue to withhold
51	63	21(c) of LA FOIP	21(c) of LA FOIP applies to the first sentence of the first paragraph of the email timestamped 9:01:00AM	Continue to withhold the first sentence of the first paragraph of the email timestamped 9:01:00AM
51	64	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
51 to 52	65 to 66	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
52 to 53	67	16(1)(b); 21(a) of LA FOIP	21(a) of LA FOIP applies.	Continue to withhold
54	Released			

55 to 56	68	16(1)(b); 21(a) of LA FOIP	21(a) of LA FOIP applies.	Continue to withhold
57 to 58	Released			
59	69	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP apply.	Release
60	70	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
61	72	21(a) of LA FOIP	21(a) of LA FOIP applies	Continue to withhold
62	73	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
62	74	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
63	75	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
63	76	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
64	77 to 78	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
65 to 66				
67	79 to 80	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
67	81 to 82	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
67	83 to 84	28(1) of LA FOIP	28(1) of LA FOIP does not apply	Release
68	85 to 86	16(1)(b); 21(c) of FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
69	87	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
69	88	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
70	89	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release

71	90	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
71 to 72	91	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
72	92	16(1)(b); 21(a) of LA FOIP	21(a) of LA FOIP applies	Continue to withhold
73	93	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
73	94	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
74	95	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
74	96	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
75	97	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
76	Released			
77	98	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
77	99	21(c) of LA FOIP	21(c) of LA FOIP applies to the last two sentences of first paragraph of email dated May 6, 2021, timestamped 10:48:20AM	Withhold the last two sentences of first paragraph of email dated May 6, 2021, timestamped 10:48:20AM; otherwise, release remainder
78	100	16(1)(b); 21(c) of LA FOIP	16(1)(b) of LA FOIP does not apply; 21(c) of LA FOIP only applies to second sentence of paragraph.	Withhold second sentence of paragraph; otherwise, release remainder
79	101 to 102	16(1)(b); 21(c) of LA FOIP	16(1)(b) of LA FOIP does not apply; 21(c) applies to the	Withhold the first sentence of the first paragraph of email timestamped

			first sentence of the first paragraph of email timestamped 9:01:00AM	9:01:00AM; otherwise, release remainder
79 to 80	103 to 104	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
80 to 82	105	16(1)(b); 21(a) of LA FOIP	21(a) of LA FOIP applies	Continue to withhold
82 to 83	Released			
84	106	16(1)(b); 21(c) of LA FOIP	Neither 16(1)(b) nor 21(c) of LA FOIP applies	Release
85	Released			
86	107	21(a)	21(a) of LA FOIP does not apply	Release
86 to 87	108	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
87	109	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
88	110	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
89	111	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply.	Release
89	112	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply.	Release
89 to 90	113	16(1)(b); 21(a) of LA FOIP	21(a) of LA FOIP applies	Continue to withhold
91	114	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
91	115	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
92	116	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release

92	117	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
93	118	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
94	119	16(1)(b); 21(c) of LA FOIP	16(1)(b) of LA FOIP does not apply; 21(c) of LA FOIP applies to the first sentence of the paragraph only.	Withhold the first sentence of the paragraph; release remainder
95	120	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
95	121	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
96	122	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
96	123	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
96	124	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
97	125	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
98 to 99	Released			
100	126	16(1)(b); 21(c) of LA FOIP	Neither 16(1)(b) nor 21(c) of LA FOIP apply	Release
101	127	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
101	128	16(1)(b) of LA FOIP	16(1)(b) applies	Continue to withhold
101	129	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
101	130	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
102	131	16(1)(b) of LA FOIP	16(1)(b) applies	Continue to withhold

102	132	16(1)(b) of LA FOIP	16(1)(b) applies	Continue to withhold
103	Released			
104	133	16(1)(b); 21(c) of LA FOIP	16(1)(b) of LA FOIP does not apply; 21(c) of LA FOIP applies to the first sentence of the paragraph only.	Withhold the first sentence of the paragraph; release remainder.
105	134	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
105	135	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
106	136	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
106	137	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
106	138	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
107	139	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
108	Released			
109	140	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
110	Released			
111	141	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
112	142	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
113	Released			
114	143	21(c) of LA FOIP	21(c) of LA FOIP does not apply	Release
114	144	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
115	145	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release

116	146	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
117	147	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
117	148	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
117 to 118	149	21(a) of LA FOIP	21(a) of LA FOIP applies	Continue to withhold
119	150	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
119	151	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
119 to 120	152	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
120	153	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
121	154	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
122 to 123	Released			
124	155	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
125 to 127	156	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
125 to 127	157	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
127 to 128	158	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
129	159	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP applies	Release
129	160	21(a) of LA FOIP	21(a) of LA FOIP applies	Continue to withhold
130	161 to 162	16(1)(b); 21(a) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
131	Released			

132	163	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
132 to 133	164	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
133	165	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
133 to 136	166	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
134	167	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
136	168	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
136	168	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
137	169	16(1)(b); 21(a) of LA FOIP	Neither 16(1)(b) nor 21(a) of LA FOIP apply	Release
137 to 138	170	21(a) of LA FOIP	21(a) of LA FOIP applies	Continue to withhold
138	171	16(1)(b); 21(a); 21(c) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
139	Released			
140	172 to 174	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
141 to 142	175	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
143	Released			
144	176	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
144	177	21(c) of LA FOIP	21(c) of LA FOIP does not apply	Release
144	178 to 179	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
145	179 to 181	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
146 to 149	Released			

150	182 to 183	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
151	Released			
152	184	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
153	185 to 187	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
154 to 156	Released			
157	188	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
157	189	21(a); 21(c) of LA FOIP	21(a) of LA FOIP applies	Continue to withhold
158	190	16(1)(b); 21(a) of LA FOIP	21(a) of LA FOIP applies	Continue to withhold
159	Released			
160	191	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
161	192	21(a) of LA FOIP	21(a) of LA FOIP applies	Continue to withhold
162	193	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release
162	194	21(a) of LA FOIP	21(a) of LA FOIP applies	Continue to withhold
163	195	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
163	196	16(1)(b); 21(a) of LA FOIP	16(1)(b) of LA FOIP applies	
163	197	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
164	198	21(a) of LA FOIP	21(a) of LA FOIP does not apply	Release
164 to 169	199	16(1)(b); 21(a) of LA FOIP	16(1)(b) of LA FOIP applies	Continue to withhold
170	200	16(1)(b) of LA FOIP	16(1)(b) of LA FOIP does not apply	Release

Part 2 Records

Page Number	Redaction Number	Exemptions applied by the City	IPC Findings	IPC Recommendations
1 to 10	Released			
11		21(c) of LA FOIP	21(c) of LA FOIP applies	Continue to withhold
12 to 39	Released			