



REVIEW REPORT 129-2022

Regina Police Service

January 10, 2023

Summary:

The Regina Police Service (RPS) received an access to information request from the Applicant to which it replied that records do not exist pursuant to subsection 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act*. The Applicant requested my office review RPS' search efforts and its decision not to reimburse the \$20 application fee. The Commissioner found that RPS conducted a reasonable search for records and recommended it take no further action. The Commissioner further found that RPS did not consider the circumstances surrounding the fee waiver and recommended that RPS consider reimbursing the \$20.00 application fee. The Commissioner further recommended that RPS update its form to ensure it is compliant with subsection 8(1)(a) of *The Local Authority Freedom of Information and Protection of Privacy Regulations*.

I BACKGROUND

[1] On May 2, 2022, the Regina Police Service (RPS) received an access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) from the Applicant. The Applicant requested access to:

All notes, emails, letters, reports or other documentation related to Chief of Police [name removed] from the Moose Jaw Police Service requesting the Regina Police Service regarding myself [Applicant] and the unauthorized leaking of information to a working journalist. Copy of ID included.

[2] The Applicant also submitted the "Application for Fee Waiver" form along with their access to information request. The Applicant cited the request is for personal information and would cause substantial financial hardship.

[3] On May 11, 2022, RPS contacted the Applicant by telephone to clarify the access request for the date range they were seeking and whether the investigation related to themselves. RPS confirmed the following with the Applicant:

The [Applicant] indicated the date range was from June 2021 to present. The [Applicant] also indicated that [they] were not sure whom [Chief of Police] contacted at RPS but knew they contacted RPS about doing an investigation on [them].

[4] On May 24, 2022, RPS responded to the Applicant with its section 7 decision indicating that it conducted a search and found no records.

[5] On June 13, 2022, the Applicant requested a review by my office.

[6] On July 28, 2022, my office provided notification to the Applicant and to the RPS of my office's intention to undertake a review.

[7] The Applicant provided two submissions to my office: one on September 23, 2022, and one on September 26, 2022. On September 26, 2022, RPS provided its submission to my office.

II RECORDS AT ISSUE

[8] At issue is RPS's search efforts and its decision not to reimburse the Applicant's \$20.00 application fee. Therefore, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[9] RPS is a "local authority" pursuant to subsection 2(f)(viii.1) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did RPS conduct a reasonable search for records?

[10] Subsection 5 of LA FOIP provides as follows:

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.

[11] Section 5 of LA FOIP is clear that access to records must be granted if the records are in the possession or under the control of the local authority subject to any exemptions under Parts III or IV or LA FOIP. However, a local authority cannot provide access to records that do not exist. Subsection 7(2)(e) of LA FOIP contemplates such situations. This provision 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;

[12] Before analyzing RPS's search efforts, I must consider the Applicant's reasons for believing why records exist. Chapter 3 of my office's [Guide to LA FOIP](#): Access to Records at page 8, provides that applicants must establish the existence of a reasonable suspicion that a local authority is withholding a record, or has not undertaken an adequate search for records (*Guide to LA FOIP*, Chapter 3, "Access to Records", updated June 29, 2021 [*Guide to LA FOIP* Ch. 3], p. 8). In their submission to my office, the Applicant listed the following reasons why they believe records existed in this case:

a. The reason why I feel that this search was unsuccessful is that every police investigation requires a file to be created.

And in this case I have submitted a copy of a Public Complaints Commission (PCC) submission I made and how they reviewed an RPS police file.

In the PCC letter - the dates were incorrect because if you read closely I would have had to submitted my complaint prior to the actual incident - they specifically mention a file and having access to the file.

The file exists but the LAFOIP to the RPS failed to provide it.

The reason is why?

When I spoke to the LAFOIP officer [they] wanted to know the name of the officer involved. I could not remember.

[They] told me since the investigation request came from the Moose Jaw Police Service (MJPS) [Chief of Police] that the request would have to be from up higher in the RPS.

It was based upon I believe the investigation into a non-criminal matter was requested by an out of town Chief of Police and additionally [Chief of Police] is a former long-term member of the RPS before he was hired in Moose Jaw.

Since this was a probe into a suspected internal leak to a journalist - accredited by the City of Moose Jaw and other organizations - was I investigated for allegedly receiving internal information from unnamed source(s)? ...

[13] The Applicant also provided my office with a letter dated October 8, 2021, from the Public Complaint's Commission (PCC) regarding a complaint they filed with it for a review of an RPS Officers' conduct. According to the PCC letter, it reviewed a recorded telephone call between an RPS officer and the Applicant. This interaction was not referenced in the search completed by RPS. From the Applicant's submission, "there must be some type of records available on who accepted [Chief of Police's] request at the RPS, the investigating sergeant's notes plus a report of the final outcome."

[14] The threshold that must be met for reviewing search efforts 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, expends a reasonable search to locate records which are reasonably related to the request. A reasonable effort is the level of effort you would expect any fair, sensible person searching the areas where records are likely to be stored. (*Guide to LA FOIP*, Ch. 3, p.7).

[15] When a local authority receives a notification letter or email from my office requesting details of its search efforts, some or all of the following can be included in the submission:

- For personal information requests – explain how the individual is involved with the local authority (i.e. client, employee, former employee, etc.) and why certain departments/divisions/branches/committees/boards were included in the search.

- Identify the employee(s) involved in the search and explain how the employee(s) is (are) experienced in the subject matter.
- Explain how the records management system is organized (both paper and electronic) in the departments/divisions/branches/committees/boards included in the search.
- Describe how records are classified within the records management system, 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 and subfolders).
- If the record has been destroyed, provide copies of record scheduled and/or destructions certificates.
- Explain how you have considered records stored off-site.
- Explain how records that may be in the possession of a third party but in the local authority's control have been searched such as a contractor or information management service provider.
- Explain how a search of mobile devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
- Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicated 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 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.

(Guide to LA FOIP, Ch. 3, pp. 9-10)

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

- [17] In RPS' submission to my office, it provided details of where it searched and why. This included the scope of the search and search categories as follows:

After it was confirmed by the applicant that they wanted information on an investigation about themselves we proceeded with a search in our approved Records Management System (IEIS). Given the way Regina Police Service does business, RPS would open a new file in the IEIS database and assign the file a number. Members would then add [Applicant] to the file, making the file searchable by Name or File Number. [Applicant] did not provide our office with a file number on their original request. Without a file number, we began a search by [Applicant's] name. The search parameters were [name of Applicant]. RPS found 75 matches to [name of Applicant]. Our next step is to compare the DOB, [the Applicant] indicated his [DOB] was [DOB]. We selected the correct [Applicant]. If [Applicant] has been involved or part of an investigation, it would show under our occurrence tab.

...

Based on the applicant's request and clarification of the request our office responded to the applicant stating that no records exist as per section 7(2)(e) of LA FOIP.

...

- [18] Because RPS' response appeared unclear, my office contacted it to gather further information about how records are logged/stored in its database, and with questions about why its search did not reference the PCC file cited by the Applicant. RPS confirmed all calls for service are logged in the IEIS database for both criminal and non-criminal matters. The calls are linked to a specific file number/person and are either logged "RA" or "RM". "RA" are any calls for service made to 911, and "RM" are regular calls for service through the non-emergent line. Any emails or telephone calls associated with the name/file number would be saved in this database.

- [19] RPS' submission also provided that the search was conducted by two experienced members of the Access and Privacy Unit. RPS initiated the search by the Applicant's name and date of birth. No records for the timeframe the Applicant requested were found. RPS also provided the following information how it searched folders and linked it back to the subject matter requested:

...search parameters and key terms were clearly identified by the applicant as well as used appropriately in IEIS...

[Applicant] did indicate in [their] request [they] were looking for notes, emails, letter, reports or other documentation... [Applicant] clarified [they] wanted investigation information on [themselves], if emails notes etc. had been created RPS members would add the records to the file and they would be saved in IEIS. As there was no file related to, [the Applicant] and investigation on [Applicant], these records did not exist.

[20] RPS confirms that professional standards investigations are completed on members of municipal police services and are not investigations into a civilian's conduct. This is supported by the [PCC website](#), which states, "the Public Complaints Commission (PCC) receives, investigates and reviews complaints against municipal police". According to RPS, if the Applicant were looking for professional standards investigations, the search would be linked to the officer's name.

[21] Since the PCC investigates the conduct of municipal police officers and the fact RPS's search was specific to an investigation on the Applicant, it did not locate this record. According to the Applicant's submission, they could not recall the name of the RPS officer who contacted them. If an investigation had been completed, it would have been linked to the officer's name, and not the Applicant's. The response RPS provided to the Applicant was based on their name search. My office specifically asked RPS about searching emails, letters, reports and notes as per the original access to information request and it confirmed since the Applicant requested an investigation on themselves, that is how it searched in the IEIS database. As a result, the Applicant's name was not linked to any files in the IEIS database for the requested timeframe. Again, RPS noted that when files are created all notes and emails are linked to that specific file.

[22] As I have previously stated in this Report, a search needs to be reasonable. RPS explained that the scope of the Applicant's access to information request was clarified and narrowed down to the Applicant's name and an investigation on themselves as that is what they requested. Therefore, it is reasonable to suggest that the keyword search would be done with the Applicant's name. As the Applicant could not recall the officer's name, RPS was unable to search by the officer's name. Given this, plus the details RPS provided about how it searched, I find it conducted a reasonable search for records. I recommend RPS take no further action with respect to search efforts on this matter.

3. Do the circumstances exist to reimburse the application fee of \$20?

[23] The Applicant requested my office review RPS's decision to not provide a waiver of the application fees. The specific fee RPS charged is laid out in subsection 5(1) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) as follows:

5(1) An application fee of \$20 is payable at the time an application for access to a record is made.

[24] Subsection 9(5) of LA FOIP provides:

9(5) Where a prescribed circumstance exists, the head may waive payment of all or any part of the prescribed fee.

[25] Subsection 8(1)(a) of the LA FOIP Regulations states as follows regarding the \$20 application fee:

8(1) For the purposes of subsection 9(5) of the act, the following circumstances are prescribed as circumstances in which a head may waive payment of fees:

(a) with respect to the fees set out in subsection 5(1), if the application involves the personal information of the applicant;

[26] On the "Application for Fee Waiver" (form), the Applicant asked for a fee waiver. I note the part where the Applicant checked states:

Payment of the prescribed fees will cause a substantial financial hardship to the applicant AND The application involves only personal information of the applicant [LA FOIP Section 8(b)(ii)(B)]

[27] In its May 24, 2022 section 7 decision to the Applicant, RPS did not address the Applicant's request to waive the \$20 application fee. However, regarding its decision to not waive the \$20 application fee, RPS submitted as follows:

9(5) - Fee states that where a prescribed circumstance exists, the head may waive payment of all or any part of the prescribed fee. When [Applicant] asked about the fee waiver, it was during the first phone call back in April, at the inquiry stage. We

acknowledged his request for a waiver and provided him the waiver form. At no time did we deny the waiver, but provided him an opportunity to describe the circumstance relating to the request to waive the fee. At this time the only applicable fee was 20\$ as per section 5(1) of the Act. An application fee of 20\$ is payable at the time an application for access is made. We considered section 8(1) of the Regulations, (b) and (c) were not applicable at this time. Subsection (a) was relevant, but as the applicant had not submitted his request yet, we did not know if the application was for personal information or general information. Waiving the 20\$ application [sic] is not a “shall” but a “may” and our unit did not have enough information at the time to warrant a fee waiver.

[28] In this matter, RPS clarified with the Applicant on May 11, 2022, that they wanted a search regarding themselves being involved in an investigation, and then sent its section 7 decision on May 24, 2022. Personal information is information that is about an identifiable individual, and that is personal in nature to that individual. A search based on the Applicant’s name would produce results that are personal in nature to them, including that they were being investigated for something. Such a search, then, would produce the Applicant’s personal information. By the time RPS provided its section 7 decision, it should have known that personal information was involved, so it is not clear to me how it did not have enough information at the time.

[29] Section 5.1 of LA FOIP places a duty to assist on a local authority, whereby they are to respond to an Applicant openly, accurately and completely. Subsection 5.1(1) of LA FOIP provides as follows:

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.

[30] To respond “openly” means to be honest, forthcoming and transparent. Being open means explaining to the applicant reasons why a decision was made. In this case, that would include providing reasons for not considering the Applicant’s request for RPS to waive the \$20 application fee. Because RPS did not do this and the Applicant’s personal information is involved, I find it did not consider the circumstances to reimburse the \$20 application fee. As such, I recommend RPS consider the request of the Applicant to refund the \$20 application fee and within 30 days of the date of this Report provide the Applicant with its decision.

[31] I note the following inconsistencies in RPS's approach to fee waivers:

- RPS' form (not prescribed) refers to portions of LA FOIP and the LA FOIP Regulations that do not appear to exist, or RPS has not made its reference on its form clear (see what I have quoted at paragraph [26] of this Report).
- Also, RPS's form does not offer an option to request a fee waiver of the application fee and indicates that "in order to be considered eligible for a fee waiver, an applicant must supply documented evidence of financial hardship/inability to pay, based on income, assets and expenses.)"

[32] Pursuant to subsection 8(1)(a) of LA FOIP, if the head is satisfied an applicant is seeking access to their own personal information, then they may exercise their discretion to waive the \$20 application fee. It is important for a local authority to consider factors that are relevant when undertaking the exercise of discretion.

[33] In addition, then, I recommend RPS update its form to ensure it is compliant with subsection 8(1)(a) of the LA FOIP Regulations within 30 days of the date of this Report and provide my office with the updated form.

IV FINDINGS

[34] I find I have jurisdiction to undertake this review.

[35] I find RPS' search efforts were reasonable.

[36] I find RPS did not consider the circumstances to reimburse the \$20 application fee.

V RECOMMENDATIONS

[37] I recommend RPS take no further action with respect to its search efforts.

[38] I recommend RPS consider the request of the Applicant to refund the \$20 application fee and within 30 days of the date of this Report provide the Applicant with its decision.

[39] I recommend RPS update its form to ensure it is compliant with subsection 8(1)(a) of the LA FOIP Regulations.

Dated at Regina, in the Province of Saskatchewan, this 10th day of January, 2023.

Ron Kruzeniski, K.C.
Saskatchewan Information and Privacy
Commission