



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 132-2021**

### **Rural Municipality of McKillop No. 220**

**January 13, 2022**

#### **Summary:**

The Applicant asked for copies of ethics complaints, and the Rural Municipality of McKillop No. 220 (RM) denied access, in full, pursuant to section 22(1)(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found the RM did not properly apply section 22(1)(c) of LA FOIP to the ethics complaints, but that section 28(1) of LA FOIP applied to some portions of them. The Commissioner recommended the RM continue to withhold or release the ethics complaints accordingly. The Commissioner also found the RM's section 7 response was compliant with section 7(2)(b) of LA FOIP, but was not compliant with sections 7(2)(d) and 7(3) of LA FOIP. The Commissioner recommended the RM ensure its future section 7 responses comply with sections 7(2) and 7(3) of LA FOIP.

#### **I BACKGROUND**

- [1] On March 1, 2021, the Rural Municipality of McKillop No. 220 (RM) received an access to information request from the Applicant as follows:

All code of ethics complaints received by the RM from June 2019 to Present

- [2] On March 16, 2021, the RM provided a response to the Applicant as follows:

The RM of McKillop No. 220 received your Access to Information Request Form on March 1, 2021 and offers the following in response to your inquiry:

1. Code of Ethic Complaints are considered private information because of the way they are handled.

2. Decisions are public and are available in the meeting minutes. Meeting minutes are published on our website.

3. You requested the processing fee for the Access for Information Request to be waived but you did not provide any additional details that this fee would cause you substantial financial hardship.

[3] On May 12, 2021, the Applicant asked my office to review the RM's decision.

[4] On May 17, 2021, my office asked the RM to clarify its response under section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), because it was unclear and did not include all the elements required by section 7 of LA FOIP.

[5] On May 18, 2021, the RM provided a new section 7 response to the Applicant that stated it was denying access to the requested records as follows:

Access to the records you have requested is denied pursuant to section 22(1)(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (the Act). The reason for refusal of these records is Ethics Complaints are considered private information because of the way they are handled in accordance with the RM of McKillop No. 220 Code of Ethic Bylaw No. 326/2017. For your information, I have included a copy of all above-noted sections of the Act and the Code of Ethic Bylaw No. 326/2017.

[6] On May 28, 2021, my office notified the Applicant and the RM of my office's intent to undertake a review of the RM's reliance on section 22(1)(c) of LA FOIP, as well as whether the RM's initial section 7 response was compliant with the requirements of section 7 of LA FOIP.

## **II RECORDS AT ISSUE**

[7] At issue are copies of ethics complaints and supporting documentation to which the RM has denied access, in full, pursuant to section 22(1)(c) of LA FOIP. Considering the Applicant's requested timeframe of "June 2019 to present", I note the RM provided copies of eight complaints to my office that are all dated either when they were received by the RM, or signed by the individual making the complaint. Of the eight, only four fall within

the Applicant's requested timeframe of "June 2019 to present". I have no information before me to indicate the Applicant modified their access to information request at any time, so the complaints I am dealing with are as follows:

- Complaint 1 – 34 pages
- Complaint 2 – 7 pages
- Complaint 3 – 8 pages
- Complaint 4 – 4 pages

### **III DISCUSSION OF THE ISSUES**

#### **1. Do I have jurisdiction?**

[8] The RM qualifies as a "local authority" pursuant to section 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

#### **2. Did the RM properly apply section 22(1)(c) of LA FOIP?**

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

**22(1)** Where a provision of:

...

(c) a resolution or bylaw;

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

[10] Section 22(1) of LA FOIP provides that where there is a conflict between LA FOIP and any other Act or regulation, LA FOIP will prevail. LA FOIP prevails even where another Act or regulation restricts or prohibits access (*IPC Guide to LA FOIP*, Chapter 1, "Purposes and Scope of LA FOIP", updated July 28, 2020 [*Guide to LA FOIP*, Ch. 1], p. 19).

- [11] “Prevail” means a provision of one Act having priority over a conflicting provision in another Act. The ordinary meaning of the word means to be superior in strength or influence (*Guide to LA FOIP*, Ch. 1, p. 19).
- [12] Section 22 of LA FOIP ensures that the fundamental rights enshrined in LA FOIP are given proper deference when interpreting legislative intent as to its application in conjunction with other statutes. This primacy clause is a strong expression of legislative intent and a tool for ensuring public policy objectives are met. In the event of a contest between two statutes, the legislature is presumed to not intend conflict between the statutes. Therefore, if an interpretation allows concurrent application, then that interpretation should be adopted (*Guide to LA FOIP*, Ch. 1, p. 20).
- [13] The RM applied section 22(1)(c) of LA FOIP to the ethics complaints, which I have numbered 1 to 4.
- [14] Regarding its reliance on section 22(1)(c) of LA FOIP, the RM stated as follows:
- Code of Ethics and Conflict of Interest legislation has become more prevalent in the Local Government over the past 5+ years. The legislation for Council members to provide in depth disclosure statements relating to any personal and business connections they may have helps guide them to determine if a conflict is present when a discussion or issue arises although it does not address personal conflicts that ratepayers may have with Council members.
- [15] It appears the RM’s argument is its bylaws prevail over LA FOIP by way of section 22(1)(c) of LA FOIP. To support its position, the RM cited sections 93.1 and 93.2 of *The Municipalities Act*, which appear to outline the requirement for a council to adopt a code of ethics, and what occurs if a council fails to do so.
- [16] The RM also provided a copy of its “Council Member Code of Ethics Bylaw... BYLAW NO. 326/2017”. The RM did not state which portion of its bylaws applies in this matter, but added that, “All Code of Ethics Complaints received by the RM from June 2019 to present. The decisions of Council are made public and publish [sic] in the meeting

minutes”. This may be consistent with what is required by section 120(2) of *The Municipalities Act*, which provides as follows:

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

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

(b) concerns long-range or strategic planning.

[17] However, I do not see the bylaw as having any application as the records withheld by the RM in this case are letters of complaint, not any records that were generated in the course of discussions during *in-camera* sessions of Council.

[18] Further, if the RM was asserting its bylaws supersede access rights in LA FOIP, it should not have applied section 21(1)(c) of LA FOIP, but rather section 22(3) of LA FOIP, which provides as follows:

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

(a) *The Health Information Protection Act*;

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

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

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

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

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

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

...

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

[20] Sections 201, 231 and 232 of *The Municipalities Act*, do not appear to deal with the confidentiality of ethics complaints, nor has the RM argued that any of these sections apply in the given circumstances.

[21] Therefore, I do not find that sections 22(1) or 22(3) of LA FOIP and section 8.1 of the LA FOIP Regulations have any application to the ethics complaints. Ethics complaints, however, may contain personal information. Although the RM has not raised section 28(1) of LA FOIP, I will review if section 28 of LA FOIP has any application on the ethics complaints in the next section of this Report.

### **3. Does section 28(1) of LA FOIP apply to the ethics complaints?**

[22] Even if a public body has not raised section 28(1) of LA FOIP, my office will still consider it because it is a mandatory exemption. Section 28(1) of LA FOIP provides as follows:

**28(1)** No local authority shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 29.

[23] Section 28(1) of LA FOIP protects the privacy of individuals whose personal information may be contained within records responsive to an access to information request made by someone else. Subsection 28(1) requires a local authority to have the consent of the individual whose personal information is in the record prior to disclosing it (*IPC Guide to LA FOIP*, Chapter 4, “Exemptions to the Right of Access”, updated April 29, 2021 [*Guide to LA FOIP*, Ch. 4], p. 240).

[24] When dealing with information in a record that appears to be personal information, the first step is to confirm the information indeed qualifies as personal information pursuant to section 23 of LA FOIP (*Guide to LA FOIP*, Ch. 4, p. 240).

[25] I previously found that section 22(1) of LA FOIP, as well as section 22(3) of LA FOIP, and section 8.1 of the LA FOIP Regulations, do not have any application to the ethics complaints. Ethics complaints, however, may contain personal information as defined by section 23(1) of LA FOIP. Section 23(1) of LA FOIP provides a list of examples of information that would qualify as personal information; however, the list is not exhaustive as other types of information may qualify as personal information. To determine if personal information is involved, local authorities should also consider the following:

1. Is there an identifiable individual? This means it must be reasonable to expect that an individual may be identified if the information were disclosed. The information must reasonably be capable of identifying particular individuals because it either directly identifies a person or enables an accurate inference to be made to their identity when combined with other available sources of information (data linking) or due to the context of the information in the record.
2. Is the information personal in nature? This that the information reveals something personal about the individual. Information that relates to an individual in a professional, official or business capacity could only qualify if the information revealed something personal about the individual for example, information that fits the definition of employment history.

[26] I note the following regarding the ethics complaints:

- They all appear to be completed on, or include as an attachment to an email, a “Schedule A Formal Complaint Form” and have what appears to be a file number assigned by the RM;
- They all appear to include the name and signature of the individual(s) who submitted each complaint as well as other information such as their addresses, phone numbers and email addresses;
- They contain details about why the complaint was made and other factors, such as which bylaw the complainant feels was violated; and
- Invariably, complaints 1 and 3 have other attachments that appear were supplied by the complainants with their complaint form, including copies of public notices or RM meeting minutes, copies of councillors’ expenses, RM policies, and other information that appears otherwise publicly available (e.g. copy of fundraising information retrieved from the Internet). Conceivably, the complainants received some of this documentation through their own access to information requests to the RM, although I do not have proof of this.

- [27] Based on this, it appears the following types of information are involved as defined by sections 23(1) (d), (e), and (h) of LA FOIP:

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:

...

(d) any identifying number, symbol or other particular assigned to the individual;

(e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;

...

(h) the views or opinions of another individual with respect to the individual; or

- [28] With respect to the identity of an individual who makes an ethics complaint, in [Investigation Report 350-2017](#), I stated at paragraph [19] that my office has taken the position that the identity of an individual who sends access to information requests or breaches of privacy complaints to a local authority is their personal information. Similarly, the identity of an individual who submits an ethics complaint would be their personal information. I find, therefore, the names and signatures of the individuals who submitted the ethics complaints are their personal information and recommend the RM continue to withhold this type of information as it appears throughout the ethics complaints.

- [29] Further to the preceding paragraph, I find that the complainants' file numbers and contact information (home addresses, email addresses and phone numbers) would be their personal information as defined by sections 23(1)(d) and (e) of LA FOIP as this information was not used in a business context, but rather in a personal one. I recommend the RM also continue to withhold this information as it appears throughout the ethics complaints pursuant to section 28(1) of LA FOIP.

- [30] With respect to the bodies of the ethics complaints, I note there is personal information as defined by sections 23(1)(h) of LA FOIP as follows that I recommend the RM continue to withhold:



<b>Complaint Number</b>	<b>Description</b>
#1 (34 pages) received by email January 29, 2021	• Page 1 to 24 contains correspondences and rationale containing an opinion the complainant has about two councillors, which is the personal information of the councillors as defined by section 23(1)(h) of LA FOIP
#2 (7 pages) date stamped received on October 1, 2020	• Pages 1 to 7 (all of the complaint) contain correspondences containing an opinion the complainant has about a councillor and responses from the RM, which is the personal information of the councillors as defined by section 23(1)(h) of LA FOIP
#3 (8 pages) date stamped received on February 25, 2020	• Pages 1, 2 and 7 contain correspondence containing an opinion the complainant had about a councillor and other information which is the personal information of the councilor as defined by section 23(1)(h) of LA FOIP
#4 (4 pages) date stamped received on February 7, 2020	• Pages 1 to 4 (all of the complaint) contain correspondence containing an opinion the complainant had about a councillor, which is the personal information of the councilor as defined by section 23(1)(h) of LA FOIP

[31] As I previously stated, complaints 1 and 3 have other attachments that appear were supplied by the complainants with their complaint form, including copies of public notices or RM meeting minutes, copies of councillors' expenses, RM policies, and other information that appears otherwise publicly available (e.g. copy of fundraising information retrieved from the Internet). Some of this information may personally identify RM councillors, but it would not be personal in nature to them. This information would also not personally identify the complainants, nor is it personal to them. Further, it does not appear that the attachments would reveal the contents of the portions of the ethics complaints that have been found to contain personal information. As such, I do not find the attachments in complaints 1 and 3, as I have described above, contain personal information pursuant to section 28(1) of LA FOIP and recommend the RM release them.

#### **4. Was the RM's response compliant with section 7 of LA FOIP?**

[32] As per my office's notification of May 28, 2021, I am reviewing the initial section 7 response the RM provided to the Applicant on March 16, 2021.

- [33] Section 7 of LA FOIP provides that an applicant must receive a response from the local authority. The response must be within 30 days and must contain certain elements, which are enumerated at sections 7(2) and (3) of LA FOIP (*IPC Guide to LA FOIP*, Chapter 3, “Access to Records”, updated June 29, 2021 [*Guide to LA FOIP*, Ch. 3], p. 26).
- [34] The RM’s initial section 7 response stated it was denying access to the records because code of ethics complaints were confidential, and because meeting minutes are published on the RM’s website. Based on the RM’s response, sections 7(2)(b), (d) and 7(3) of LA FOIP are relevant in this case. These sections provide:
- 7(2) The head shall give written notice to the applicant within 30 days after the application is made:
- ...
- (b) if the record requested is published, referring the applicant to the publication;
- ...
- (d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;
- ...
- (3) A notice given pursuant to subsection (2) is to state that the applicant may request a review by the commissioner within one year after the notice is given.
- [35] With respect to the 30 days in which a local authority must respond, I note the RM received the Applicant’s access to information request on March 1, 2021, and responded on March 16, 2021. This was within the 30-day time limit to respond.
- [36] With respect to the RM’s response directing the Applicant to the RM’s website for copies of RM meeting minutes, section 7(2)(b) of LA FOIP requires a local authority to provide such direction. As such, I find the RM was compliant with section 7(2)(b) of LA FOIP.
- [37] With respect to the RM’s response that code of ethics complaints are confidential, section 7(2)(d) of LA FOIP required the RM to explicitly state on which provision of LA FOIP it was relying to withhold the complaints. With prompting from my office, the RM later indicated to the Applicant it was denying access pursuant to section 22(1)(c) of LA FOIP.

However, I find the RM's response of March 16, 2021, did not meet the requirements set out by section 7(2)(d) of LA FOIP.

[38] Finally, section 7(3) of LA FOIP requires a local authority to state an applicant may request a review by my office within one year of receiving the local authority's response. Again, with prompting from my office, the RM did include this in its new response to the Applicant. However, I find the RM's section 7 response of March 16, 2021, did not meet the requirements set out by section 7(3) of LA FOIP.

[39] In conclusion, I find the RM's section 7 response of March 16, 2021, complied with section 7(2)(b) of LA FOIP, and did not comply with sections 7(2)(d) and 7(3) of LA FOIP. I recommend the RM ensure its future section 7 responses to applicants are in compliance with section 7 of LA FOIP.

#### **IV FINDINGS**

[40] I find that the RM did not properly apply section 22(1)(c) of LA FOIP.

[41] I find section 28(1) of LA FOIP applies to ethics complaints 1 to 4, as I have outlined at paragraphs [28] to [31] of this Report.

[42] I find the RM's section 7 response of March 16, 2021, complied with section 7(2)(b) of LA FOIP, and did not comply with sections 7(2)(d) and 7(3) of LA FOIP.

#### **V RECOMMENDATIONS**

[43] I recommend the RM continue to withhold or release information in the ethics complaints as I have outlined at paragraphs [28] to [31] of this Report.

[44] I recommend the RM ensure its future section 7 responses to applicants are in compliance with section 7 of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 13th day of January, 2022.

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