



REVIEW REPORT 132-2022

Regina Police Service

November 3, 2022

Summary: The Regina Police Service (RPS) received an access to information request from the Applicant. RPS partially withheld information in the records pursuant to subsections 14(1)(j), (k) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found RPS properly applied subsection 28(1) of LA FOIP to some parts of the records, but not to others. The Commissioner also found RPS properly applied subsection 14(1)(j) of LA FOIP, but that it did not properly apply subsection 14(1)(k) of LA FOIP. The Commissioner recommended RPS continue to withhold or release information accordingly.

I BACKGROUND

[1] On June 22, 2022, Regina Police Service (RPS) received an access to information request from the Applicant as follows:

Police reports from the evening of April 27th, 2022 to the following evening of April 28th, 2022 any request for information to the Regina Police Service Victim Services regarding an incident at [address redacted].

[2] In correspondence dated June 23, 2022, RPS responded to the Applicant indicating it was partially denying access to portions of the record pursuant to subsections 13(1)(a), 14(1)(e), (j) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] On June 24, 2022, the Applicant asked my office to review RPS' decision.

- [4] On June 27, 2022, my office provided notification to the Applicant and RPS of my office’s intention to undertake a review.
- [5] On September 26, 2022, the Applicant provided my office with their submission.
- [6] On September 27, 2022, RPS provided my office with its submission. In its submission, RPS stated it removed subsection 14(1)(e) of LA FOIP and released those portions to the Applicant. I will, therefore, not review subsection 14(1)(e) of LA FOIP. RPS also stated it changed the line of information on page 1 (point 6) from subsection 13(1)(a) of LA FOIP to subsection 28(1) of LA FOIP. As that was the only place RPS had relied on subsection 13(1)(a) of LA FOIP, I no longer need to review this exemption.

II RECORDS AT ISSUE

- [7] At issue are copies of five reports totaling nine pages. RPS applied partial exemptions to seven of the nine pages as follows:

Page Number	LA FOIP Exemptions/ Subsections Applied
1 (General Report)	<ul style="list-style-type: none"> • 28(1) to portions of point 1 and to all of points 2 to 6
2 (Supplementary Occurrence Report)	<ul style="list-style-type: none"> • 28(1) to portions of points 1 to 3
3 (Dispatch from CAD Details)	<ul style="list-style-type: none"> • 14(1)(j) to event type information/code • 28(1) to complainant name and phone number and portions of event remark by operator “5839”
5 and 6 (General Report)	<ul style="list-style-type: none"> • 28(1) to points to portions of points 2 to 6 and portion of point 7
7 and 8 (Dispatch from CAD Details)	<ul style="list-style-type: none"> • 28(1) to event remark by operators “5102”, “5154” and “5434” • 14(1)(j) to event type information/code • 14(1)(k) to portion of one event remark by operator “5102” and to all of an event remark by operator “5434”

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[8] 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 properly apply subsection 28(1) of LA FOIP?

[9] Subsection 28(1) of LA FOIP is a mandatory exemption that 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.

[10] Subsection 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) of LA FOIP requires a local authority to have the consent of the individual whose personal information is in the record prior to disclosing it. Without consent, personal information cannot be released unless one of the provisions under subsection 28(2) of LA FOIP applies (*Guide to LA FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 29, 2021 [*Guide to LA FOIP*, Ch. 4], pp. 240-241).

[11] 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). Subsection 23(1) of LA FOIP provides 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:

(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;

- (b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) information that relates to health care that has been received by the individual or to the health history of the individual;
- (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;
- (f) the personal opinions or views of the individual except where they are about another individual;
- (g) correspondence sent to a local authority by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;
- (h) the views or opinions of another individual with respect to the individual;
- (i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;
- (j) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or
- (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.

[12] The portions of the records RPS released to the Applicant describe three separate events that occurred between the Applicant and Individual A on a certain date. Most of the information or detail in each report is provided by Individual A, but there are also portions where other individuals contribute information. There does not appear to be any information in the records that the Applicant directly provided.

[13] RPS applied subsection 28(1) of LA FOIP to portions of pages 1 to 3 and 5 to 8 of the records. RPS stated the types of information involved in these pages regards a particular individual [Individual A] and is their personal information pursuant to section 23(1) of LA FOIP. RPS did not cite which parts of subsection 23(1) of LA FOIP are involved, but stated the information includes Individual A's race, creed, name, date of birth, criminal history and address or phone number.

[14] RPS added as follows:

It is also important to note that the files identified by the applicant were related to [type of] calls. While Regina Police Service does provide the public with the right of access and considers Section 8 on every request, our focus will always be on the victim of the [type of call] and protection of their information and comments whether or not the comments are related to the applicant. In these two files, the information pertained to 2 people ([Applicant] and [Individual A]). Both individuals would know what the other person had said about them, as they were the only two involved in the incident. It is our view that sharing the comments directly made by [Individual A] would reveal personal information about [themselves] and possibly put [them] in harm's way as the information shared with RPS officers was given without the applicant present.

[15] Before I continue my analysis of RPS' reliance on subsection 28(1) of LA FOIP, I will consider factors that impact whether information in a record is "personal information" for the purposes of LA FOIP.

[16] First, in past reports by my office, it has been stated that subsection 28(1) of LA FOIP does not apply if there is personal information regarding an applicant in the record pursuant to subsection 23(1)(h) of LA FOIP (see [Review Report 086/2014](#) and [Review Report 109-2021](#)). That is, any opinions about the Applicant would be their personal information as defined by subsection 23(1)(h) of LA FOIP.

[17] Past reports of this office have also stated it is an absurd result to withhold personal information from an individual if they are clearly aware of that information, adopting an approach taken by the Ontario Information and Privacy Commissioner in [Order MO-1196](#). In the Applicant's submission, they acknowledge they know Individual A and that they had a relationship with them. The Applicant provided details and explanations of what

occurred between themselves and Individual A on the day in question, and how the Applicant was involved in those events. The Applicant included the names of individuals involved in the events and how they are known to the Applicant and to each other.

[18] Finally, in my office's [Review Report 023-2019, 098-2019](#), I continued an approach taken by this office in [Review Report LA-2013-001](#), in which it was stated that information about a person being interviewed does not necessarily qualify as personal information. This is because there is no special category of personal information of or about witnesses in Part IV of LA FOIP when dealing with the collection, use or disclosure of personal information. That report went further to state that LA FOIP addresses the "identity of a confidential source" within the context of section 14 exemptions for law enforcement and investigations. RPS, however, has not raised section 14 on any portions of the records where it is relying on subsection 28(1) of LA FOIP. Because of this, witnesses to any investigations are not, for the purposes of section 23, 28 and 30, treated any differently than any other individual apart from an applicant.

[19] With these in mind, I begin with where the records contain personal information as follows:

- Page 1 (General Report) – points 2 to 5 contain personal information about Individual A pursuant to subsection 23(1)(k)(i) of LA FOIP, including information pertaining to Individual A's personal circumstances; point 6 contains personal information pursuant to subsection 23(1)(b) of LA FOIP;
- Page 2 (Supplementary Occurrence Report) – point 3 contains personal information pertaining to Individual A's circumstances pursuant to subsection 23(1)(k)(i) of LA FOIP;
- Page 3 (Dispatch from CAD Details) – the "complainant phone number" is their personal information pursuant to subsection 23(1)(e) of LA FOIP; operator remarks "5389" numbers 5 (second blue line redaction) and 8 (last redaction) contain information about Individual A's circumstances pursuant to subsection 23(1)(k)(i) of LA FOIP;
- Pages 5 and 6 (General Report) – points 3, 4, 5, 6 and 7 contain personal information about Individual A's personal circumstances pursuant to subsection 23(1)(k)(i) of LA FOIP; and

- Page 8 (Dispatch from CAD Details) – operator remark “5102” (top redaction), operator remark “5145” and all operator remarks “5434” contain personal information about Individual A’s personal circumstances or others’ circumstances pursuant to subsection 23(1)(e), (f) and (k)(i) of LA FOIP.

[20] I find RPS properly applied section 28(1) of LA FOIP as I have outlined at paragraph [19] of this Report, and recommend it continue to withhold this information pursuant to section 28(1) of LA FOIP.

[21] The remaining information in the record where RPS is relying on subsection 28(1) of LA FOIP contains information that is either the Applicant’s personal information, that the Applicant would otherwise know, or that is witness testimony that does not constitute personal information. This includes:

- Page 1 (General Report) - point 1 contains details the Applicant would otherwise know, as well as witness testimony or facts about the events that occurred;
- Page 2 (Supplementary Occurrence Report) – points 1 and 2 contain witness testimony as well as information the Applicant would otherwise know;
- Page 3 (Dispatch from CAD details) – the Applicant knows who the “Complainant” in this matter is; the remaining redactions where RPS applied section 28(1) of LA FOIP (except those where I found RPS properly applied section 28(1) of LA FOIP) contain either witness testimony or information the Applicant would otherwise know;
- Pages 5 and 6 (General Report) – point 2 contains an opinion about the Applicant that is their personal information pursuant to section 23(1)(h) of LA FOIP; and
- Page 7 – operator remark “5102” (last redaction) contains information the Applicant would otherwise know.

[22] I find RPS did not properly apply subsection 28(1) of LA FOIP as I have outlined at paragraph [21] of this Report and recommend it release this information.

3. Did RPS properly apply subsection 14(1)(j) of LA FOIP?

[23] Subsection 14(1)(j) of LA FOIP provides 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;

[24] Subsection 14(1)(j) of LA FOIP is a discretionary harm-based exemption. It permits refusal of access in situations where release of a record could facilitate the commission of an offence or impedes the detection of one (*Guide to LA FOIP*, Ch. 4, p. 71).

[25] The following two-part test can be applied. However, only one of the questions needs to be answered in the affirmative for the exemption to apply. There may be circumstances where both questions apply and can be answered in the affirmative.

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, p. 72)

[26] RPS applied subsection 14(1)(j) of LA FOIP to event codes on pages 3 and 7 of the records. RPS submitted that these are “900 codes”, and that “knowledge of them could be used to impede an offence by diverting calls for service”.

[27] Section 14 of LA FOIP uses the word could versus “could reasonably be expected to” as seen in other provisions of LA FOIP. The threshold for could is somewhat lower than a reasonable expectation. The requirement for could is simply that the release of the information could have the specified result. There would still have to be a basis for asserting the harm could occur. If it is fanciful or exceedingly remote, the exemption should not be invoked. For this provision to apply there must be objective grounds for believing that releasing the information could impede the detection of an offence (*Guide to LA FOIP*, Ch. 4, pp. 72-73).

[28] In my office’s [Review Report 156-2021](#) also concerning RPS, I found that subsection 14(1)(j) of LA FOIP applies to this type of information. That is, disclosure of such codes

“could” have the effect of impeding an offence. It does not have to be a likelihood; it just has to be possible. Since I am dealing with the same type of information in this matter, I find RPS properly applied subsection 14(1)(j) to the event codes on pages 3 and 7 of the records, and recommend it continue to withhold this information pursuant to subsection 14(1)(j) of LA FOIP.

4. Did RPS properly apply subsection 14(1)(k) of LA FOIP?

[29] Subsection 14(1)(k) of LA FOIP provides as follows:

14(1) A head may refuse to give access to a record, the release of which could:

...

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

[30] Subsection 14(1)(k) of LA FOIP is a discretionary exemption that contains both a class and harm-based component. It permits refusal of access in situations where release of a record could interfere with a law enforcement matter or disclose information respecting a law enforcement matter (*Guide to LA FOIP*, Ch. 4, p. 74).

[31] The following two-part test can be applied:

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

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

[32] RPS applied subsection 14(1)(k) of LA FOIP to a line of information (second redaction from the bottom) next to operator “5434” on the record itself. RPS also included a reference to subsection 14(1)(k) of LA FOIP on its index; however, RPS did not speak to this

exemption in its submission. Section 51 of LA FOIP places the burden of proof on the head of the local authority as follows:

51 In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned.

[33] Without any arguments from RPS, I find it did not properly apply subsection 14(1)(k) of LA FOIP to page 7 of the record. I recommend RPS release the information where it applied subsection 14(1)(k) of LA FOIP.

IV FINDINGS

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

[35] I find RPS properly applied subsection 28(1) of LA FOIP as I have outlined at paragraph [19] of this Report, and that it did not properly apply subsection 28(1) of LA FOIP as I have outlined at paragraph [21] of this Report.

[36] I find RPS properly applied subsection 14(1)(j) of LA FOIP.

[37] I find RPS did not properly apply subsection 14(1)(k) of LA FOIP.

V RECOMMENDATIONS

[38] I recommend RPS continue to withhold the information as I have outlined at paragraph [19] of this Report pursuant to subsection 28(1) of LA FOIP, and that it release the information where it applied subsection 28(1) of LA FOIP as I have outlined at paragraph [21] of this Report.

[39] I recommend RPS continue to withhold the information where it applied subsection 14(1)(j) of LA FOIP.

[40] I recommend RPS release the information where it applied subsection 14(1)(k) of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 3rd day of November, 2022.

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