



## **REVIEW REPORT 152-2023**

### **City of Regina**

**December 5, 2023**

#### **Summary:**

The City of Regina (City) received an access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) from the Applicant. The City withheld records in part pursuant to subsections 16(1)(a), 16(1)(b), 28(1), 30(2) and section 20 of LA FOIP. The City also provided the Applicant with a fee estimate. The Commissioner found that the City properly applied subsections 16(1)(b) and 28(1) of LA FOIP to some portions of information in the records but not others. The Commissioner also found the City did not properly apply section 20 and subsection 30(2) of LA FOIP to the information withheld. Finally, the Commissioner found that the City's fee estimate was reasonable. The Commissioner recommended the City release the parts of the records it withheld improperly pursuant to subsections 16(1)(b), 28(1), 30(2) and section 20 of LA FOIP within 30 days of receiving this Report and withhold the rest.

#### **I BACKGROUND**

[1] On March 9, 2023, the City of Regina (City) received an access to information request from the Applicant as follows:

Any recorded information about me, including, but not limited to: information about my race; religion; family status; age; birthdate; place of origin; employment or criminal history; financial information; health services number; driver's license number; social insurance number; home address; email address or telephone number; physical or mental condition, or any individual's opinion about me from City of Regina Human Resource employee's email accounts, specifically, but not limited to: [City of Regina employees]. And from any Human Resource employee's team chats, specifically, but not limited to: [City of Regina employees].

October 2022 – present

[2] On March 10, 2023, the Applicant sent an email to the City asking it to amend the following in their original access to information request – “And from any Human Resource employee’s team chats, specifically, but not limited to:” and adjust the request to include records to and/or from any Human Resources (HR) employee’s email or team chats.

[3] On March 11, 2023, the Applicant sent an email to the City as follows:

In order to possibly assist in reducing labour involved with request #2, please know I have no expectation of records being considered actionable where they are either: to, from, or cc: my own personal work email account, or Teams chat handle.

[4] On April 4, 2023, the City wrote a letter to the Applicant advising them that it was extending the 30-day response period by an additional 30 days pursuant to subsections 12(1)(a)(i) and (b) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) as follows:

Please be advised that we have extended the 30 day response period by an additional 30 days pursuant to:

- subclause 12(1)(a)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* as your “...application is for access to a large number of records or necessitates a search through a large number of records and completing the work within the original period would unreasonably interfere with the operations of the local authority.
- subclause 12(1)(b) of *The Local Authority Freedom of Information and Protection of Privacy Act* as “...consultations that are necessary to comply with the application cannot reasonably be completed within the original period.

[5] In a letter to the Applicant dated May 5, 2023, the City provided the Applicant with its fee estimate of \$189.75. The City also requested a 50% deposit before proceeding.

[6] In its section 7 decision dated June 9, 2023, the City indicated the Applicant paid the full amount of \$189.75.

- [7] Also on June 9, 2023, the City responded to the Applicant in its section 7 decision indicating that it was releasing records to the Applicant in part but would be withholding portions pursuant to subsections 16(1)(a), 16(1)(b), 28(1), 30(2) and section 20 of LA FOIP.
- [8] On June 11, 2023, my office received a request for review from the Applicant regarding the City's decision to withhold records in part pursuant to subsections 16(1)(a), 16(1)(b), 28(1) 30(2) and section 20 of LA FOIP as well as its fee estimate of \$189.75.
- [9] On July 5, 2023, my office sent notices to the City and the Applicant advising of my office's intent to undertake a review of the City's decision. My office requested that the City provide a copy of the record and an index of records to my office by August 4, 2023, and its submission by September 5, 2023. The Applicant was also invited to provide a submission by September 5, 2023.
- [10] On August 3, 2023, my office granted a deadline extension to September 5, 2023 for the City to provide the record and an index of records. However, the City provided the records and an index of records on August 22, 2023.
- [11] On September 8, 2023, after a request from the City, my office extended the deadline for the City to send its submission to September 19, 2023.
- [12] On September 22, 2023, the City provided my office with its submission. The Applicant did not provide a submission.

## **II RECORDS AT ISSUE**

- [13] There are 53 records at issue and a total of 87 pages from the records that were withheld either in full or in part. The records consist of email messages, email letter attachments, meeting notes and Microsoft Excel spreadsheets. The City withheld information on the 87 pages pursuant to subsections 16(1)(a), 16(1)(b), 28(1), 30(2) and section 20 of LA FOIP. See Appendix A for details.

### III DISCUSSION OF THE ISSUES

#### 1. Do I have jurisdiction?

[14] The City qualifies as a “local authority” pursuant to subsection 2(1)(f)(i) of LA FOIP. Therefore, I find that I have jurisdiction to review this matter.

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

[15] The City applied subsection 16(1)(b) of LA FOIP to portions of information in records 1 to 43 as described in Appendix A of this Report.

[16] 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;

[17] 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 LA FOIP*, Ch. 4], pp. 113-114).

[18] Following is an analysis to determine if the two-part test has been met.

#### *1. Does the record contain consultations or deliberations?*

[19] The City asserted that the withheld information qualifies as consultations and deliberations between City employees.

[20] “Consultation” means the action of consulting or taking counsel together: deliberation, conference. It is a conference in which parties consult and deliberate. 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).

[21] “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; 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).

[22] In my office’s [Review Report 119-2022](#), I referred to [Order F2013-13](#) by Alberta’s Office of the Information and Privacy Commissioner (AB IPC). The AB IPC explained the words “consultations” and “deliberations” set out in subsection 24(1)(b) of Alberta’s *Freedom of Information and Protection of Privacy Act* (AB FOIP) (which is the equivalent of subsections 16(1)(b) of LA FOIP):

[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 the 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(b) is concerned with the situation where advice is sought or considered.

[Emphasis added]

[23] From a review of the records, the redacted information in records 1 to 18, 20 to 33 and 36 to 43, includes email messages between different sets of City employees in which discussions occur and ideas/views/directives about the context/background of a work-related situation and how to handle it are sought and expressed. This constitutes consultations and deliberations. Pursuant to subsection 16(1)(b) of LA FOIP, the first part of the test is met for records 1 to 18, 20 to 33 and 36 to 43.

[24] Also, from a review of the records, the redacted information in records 19, 34 and 35 includes the following:

- A complaint submission by a City employee regarding the conduct of another City employee (record 19);
- The subjective assessment of a City employee about the behavior of another City employee (record 34); and
- Information on a course of action a City employee plans to take regarding the employment file of another City employee (record 35).

[25] The information in records 19, 34 and 35 cannot be described as consultations or deliberations. As such the first part of the test is not met for those records. Since the same redactions withheld pursuant to subsection 16(1)(b) of LA FOIP in records 19, 34 and 35 were also withheld pursuant to section 20 of LA FOIP, I shall consider them under those exemptions applied.

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

[26] "Involving" means including (*Guide to LA FOIP*, Ch. 4, p. 114).

[27] “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).

[28] 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 City. In addition, the City provided the job titles for all employees whose names appear in the To and From lines in the emails and they all appear to be City employees.

[29] Therefore, I find the City properly applied subsection 16(1)(b) of LA FOIP to records 1 to 18, 20 to 33 and 36 to 43. I recommend the City continue to withhold those records.

[30] The City also applied subsection 16(1)(a) of LA FOIP to the same information it redacted from records 1 to 18, 20 to 33 and 36 to 43 pursuant to subsection 16(1)(b) of LA FOIP. Since I have found that the City properly applied subsection 16(1)(b) of LA FOIP, I will not review its application of subsection 16(1)(a) of LA FOIP.

### **3. Did the City properly apply section 20 of LA FOIP?**

[31] The City applied section 20 of LA FOIP to portions of information in records 19, 34, and 35 as described in paragraph [24] of this Report.

[32] Subsection 20 of LA FOIP is a discretionary, harm-based exemption. It permits refusal of access in situations where disclosure of a record could threaten the safety or the physical or mental health of an individual (*Guide to LA FOIP*, Ch. 4, p. 214). The section states:

**20(1)** A head may refuse to give access to a record if the disclosure could threaten the safety or the physical or mental health of an individual.

[33] The exemption applies in circumstances where the disclosure of the record threatens the safety or the physical or mental health of an individual (*Guide to LA FOIP*, Ch. 4, p. 215).

- [34] The threshold for “could” is somewhat lower than a reasonable expectation. On the threshold, *speculation* is at one end and *probable* (or “could reasonably be expected”) is at the other. The middle ground for “could” therefore, is what is possible (*Guide to LA FOIP*, Ch. 4, p. 215).
- [35] Generally, this means the local authority must assess the risk and determine whether there are reasonable grounds for concluding there is a danger to the health or safety of any person. That assessment must be specific to the circumstances of the case under consideration. The inconvenience, upset or unpleasantness of dealing with difficult or unreasonable people is not sufficient to trigger the exemption. The threshold cannot be achieved based on unfounded, unsubstantiated allegations (*Guide to LA FOIP*, Ch. 4, p. 215).
- [36] To “threaten” means to be likely to injure; be a source of harm or danger to. It means to create the possibility or risk of harm or jeopardize an individual’s safety or mental or physical wellbeing (*Guide to LA FOIP*, Ch. 4, p. 216).
- [37] “Safety” means the state of being protected from or guarded against hurt or injury; freedom from danger (*Guide to LA FOIP*, Ch. 4, p. 216).
- [38] “Mental health” means the condition of a person in respect of the functioning of the mind. It means the ability of a person’s mind to function in its normal state. Determination of the effect of a release of information on a person’s mental health must, where practicable, be based on a subjective evaluation made on a case-by-case basis (*Guide to LA FOIP*, Ch. 4, p. 216).
- [39] The local authority should be able to detail what the harm is and to whom the harm threatens if the information were released (*Guide to LA FOIP*, Ch. 4, p. 215).
- [40] In its submission to my office, the City asserted the information withheld pursuant to section 20 of LA FOIP are statements from City employees about their encounters with another City employee. From a review of the records, the City employees expressed

unfavorable encounters between themselves and the other City employee and it was implied that the information would be kept confidential.

[41] The City did not explain how releasing the information could cause mental distress or physical harm to a person. Section 51 of LA FOIP places the burden of proof on the local authority to demonstrate that access may or must be refused. The burden of proof has not been met for the information withheld in records 19, 34, and 35 pursuant to section 20 of LA FOIP. I am not satisfied that the disclosure of the statements in the records to the Applicant could threaten the safety or the physical or mental health of those who wrote the statements or of any other person. Therefore, I find that the City did not properly apply section 20 of LA FOIP to records 19, 34, and 35. I recommend that the City release the information redacted in records 34 and 35 to the Applicant. Since the City also applied subsection 30(2) of LA FOIP to the same redacted information in record 19, I shall review the redacted information in record 19 under subsection 30(2) of LA FOIP next.

**4. Did the City properly apply subsection 30(2) of LA FOIP?**

[42] The City applied subsection 30(2) of LA FOIP to all three pages of record 19. Subsection 30(2) of LA FOIP provides:

**30(2)** A head may refuse to disclose to an individual personal information that is evaluative or opinion material compiled solely for the purpose of determining the individual's suitability, eligibility or qualifications for employment or for the awarding of contracts and other benefits by the local authority, where the information is provided explicitly or implicitly in confidence.

[43] This provision enables the head to refuse to disclose to individuals, *personal information* that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility, or qualifications for employment or for the awarding of contracts and other benefits by the local authority (*Guide to LA FOIP*, Ch. 4, p. 245).

[44] The provision attempts to address two competing interests: the right of an individual to have access to his or her personal information and the need to protect the flow of frank

information to local authorities so that appropriate decisions can be made respecting the awarding of jobs, contracts, and other benefits (*Guide to LA FOIP*, Ch. 4, p. 245).

[45] In order for subsection 30(2) of LA FOIP to apply, the following three-part test must be met:

1. Is the information personal information that is evaluative or opinion material?
2. Was the personal information compiled solely for one of the enumerated purposes?
3. Was the personal information provided explicitly or implicitly in confidence?

***1. Is the information personal information that is evaluative or opinion material?***

[46] In its submission to my office, the City indicated that the information withheld pursuant to subsection 30(2) of LA FOIP includes communications between Human Resources and various employees that outline issues the City was having with an employee. The City did not indicate how the information qualifies as personal information as described in subsection 23(1) of LA FOIP.

[47] In order to qualify as *personal information*, the information must be about an identifiable individual and must be personal in nature. On the face of the record, subsection 23(1) of LA FOIP applies as the information appears to be opinions about the Applicant:

**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:

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

[48] “Opinions” are views or judgements not necessarily based on fact or knowledge. “Views” are particular ways of regarding something; an attitude or opinion. The views or opinions expressed by an individual about another individual are the personal information of the individual they are about (*Guide to LA FOIP*, Chapter 6: “Protection of Privacy”, updated: February 27, 2023, [*Guide to LA FOIP*, Ch. 6], pages 60-61).

[49] From a review of record 19, the information withheld is an assessment and compilation of behavioral conduct complaints made by City employees about the Applicant. Therefore, this information qualifies as the Applicant's personal information as described under subsection 23(1)(h) of LA FOIP.

[50] "Evaluative" means to have assessed, appraised, to have found or to have stated the number of. "Opinion material" is a belief or assessment based on grounds short of proof; a view held as probable for example, a belief that a person would be a suitable employee, based on that person's employment history. An opinion is subjective in nature and may or may not be based on facts (*Guide to LA FOIP*, Ch. 4, p. 246).

[51] Record 19 as described in paragraph [24] of this Report qualifies as both "evaluative" and "opinion material" as it includes an assessment of an employee's (Applicant's) behavioral conduct and the opinions of others that were used in that assessment. Therefore, the first part of the test is met.

***2. Was the information compiled solely for one of the enumerated purposes?***

[52] "Compiled" means that the information was drawn from several sources or extracted, extrapolated, calculated or in some other way manipulated. The enumerated purposes are:

- for determining the individual's suitability, eligibility or qualifications for employment;
- for the awarding of contracts with the local authority; or
- for awarding other benefits by the local authority.

(*Guide to LA FOIP*, Ch. 4, p. 246).

[53] In its submission to my office, the City did not indicate which of the enumerated purposes outlined in paragraph [24] of this Report the information was compiled for. As noted earlier, section 51 of LA FOIP places the burden of proof on the local authority to demonstrate that access may or must be refused. As such, the second part of the test has

not been met. Since all three parts of the test must be met, I find that the City did not properly apply subsection 30(2) of LA FOIP to the information it withheld in record 19. Since record 19 was also withheld pursuant to subsection 28(1) of LA FOIP, I shall review it under that subsection next.

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

[54] The City applied subsection 28(1) of LA FOIP to all pages in records 19, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53.

[55] Subsection 28(1) of LA FOIP is a mandatory exemption that prohibits the disclosure of personal information unless the individual about whom the information pertains consents to its disclosure, or if the disclosure is authorized by one of the subsections of 28(2) or section 29 of LA FOIP (*Guide to LA FOIP*, Ch. 6, p. 64).

[56] 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.

[57] In its submission to my office, the City asserted that the information it withheld is personal information as follows:

... Information redacted included employee numbers, hiring dates, HR Status, using subsections 23(1)(b) and 23(1)(d). This information contained employment history and identifying numbers of employees...

...

The City redacted personal information of other City employees ... applying subsections 28(1)(b)(f)(g)(h). These records were requested from the sender by Human Resources for an ongoing investigation regarding the suitability of the applicant as an employee of the City of Regina. There was implied consent between the sender and Human Resources that this information would be provided and retained as confidential information. Information in this record contains the personal opinions and views of the sender and the personal opinions and views mentioned by the sender of other employees.

...

[58] The City indicated that the information it withheld qualifies as personal information as described in subsections 23(1)(b), (d), (f), (g) and (h) of LA FOIP.

[59] For subsection 28(1) of LA FOIP to apply, the information in question must qualify as “personal information”. Subsection 23(1) of LA FOIP defines “personal information” and provides examples of the types of information that qualify as personal information. When information does not constitute personal information, the rules under PART IV of LA FOIP do not apply (*Guide to LA FOIP*, Ch. 6, p. 81). Subsections 23(1)(b), (d), (f), (g) and (h) of LA FOIP are as follows:

**23(1)** Subject to subsection (1.1) and (2), “**personal information**” means personal information about an identifiable individual that is recorded in any form, and includes:

...

(b) information that relates to the education or the criminal or employment history of the individual or information relating financial transactions in which the individual has been involved;

...

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

[60] From a review of record 19, the City withheld information about complaints made by City employees about another City employee (Applicant). This information qualifies as the Applicant’s personal information as defined under subsection 23(1)(h) of LA FOIP. Individuals have a right to their own personal information pursuant to subsection 30(1) of LA FOIP unless subsections 30(2) or (3) of LA FOIP apply. I found earlier in this Report

that the City did not demonstrate that subsection 30(2) of LA FOIP applied. Further, subsection 28(1) of LA FOIP is applied when the personal information is not that of the Applicant. I found however it is. Therefore, I find that the City did not properly apply subsection 28(1) of LA FOIP as is the Applicant's own personal information. I recommend the City release record 19 in full to the Applicant within 30 days of receiving this Report.

[61] For records 44 to 53, the City indicated in its submission to my office as follows:

...Information redacted included employee numbers, hiring dates, HR Status, using subsections 23(1)(b) and 23(1)(d). This information contained employment history and identifying numbers of employees...

[62] "Employment history" is the type of information normally found in a personnel file such as performance reviews, evaluations, disciplinary actions taken, reasons for leaving a job, information in a résumé, or leave transactions. It does not include work product. General information, such as references to the type of employment entered into, certain actions taken, and relevant dates of those options are also not included (*Guide to LA FOIP*, Ch. 6, p. 50).

[63] "Employment history" does not include:

- Discreet pieces of information that might reveal information about a particular episode in a person's employment (e.g., names of employees interviewed with respect to a complaint). Employment history does not include every action of an individual employee. The fact that a named public servant has performed or undertaken a specific task is not "employment history" in the requisite sense.
- Employment history refers only to past employment and not to aspects of current employment such as employee's current salary or job position.
- It does not include a person's name, without more.
- It does not generically refer to all employment-related incidents.

(*Guide to LA FOIP*, Ch. 6, pp. 50-51)

[64] In my office's [Review Report LA-2012-002](#), I considered this type of information:

[25] Further, the Supreme Court of Canada considered whether work hours were personal information in *Dagg v. Canada (Minister of Finance)*. The majority ruled that hours of work pertain more to the job description of an individual than personal information. The majority agreed with Justice La Forest's description as follows:

Generally speaking, **information relating to the position, function or responsibilities of an individual will consist of this type of information disclosed in a job description...**

It will comprise the terms and conditions associated with a particular position, including such information as qualifications, duties, responsibilities, hours of work and salary range.

...

[29] Section 23(1)(d) states that "any identifying number, symbol or other particular assigned to the individual" constitutes personal information.

[30] Furthermore, in my Report F-2005-001, **I found that an employee number, when linked with a name also constitutes the individual's personal information.**

[Emphasis added]

[65] Further, in my office's [Investigation Report F-2012-004](#), I clarified that the date an employee was hired would constitute personal information:

[35] **Hire date**, last day worked, re-hire date and action to be taken regarding Individual #2's employment status **would all qualify as work history** and therefore personal information pursuant to section 24(1)(b) of FOIP. I have also previously found that an employee number would constitute employment history as well.

[Emphasis added]

[66] My review of records 44 to 53 reveals employee names combined with an identifying employee number. This constitutes the "personal information" of individuals other than the Applicant as defined under subsection 23(1)(d) of LA FOIP. Records 44 to 53 also include employee hire dates which constitutes the "personal information" of individuals other than the Applicant as defined by subsection 23(1)(b) of LA FOIP. I find that the City properly applied subsection 28(1) of LA FOIP to this information. I recommend the City continue to withhold this information.

[67] The other information found in records 44 to 53 are names of employee supervisors, employee categories (e.g., full-time, new hire, etc.), daily work hours, assignment categories (e.g., term assignment), other individuals’ work-related classifications (e.g., division worked, bargaining unit, and assigned department) that cannot be described as personal information under subsection 23(1) of LA FOIP. In my office’s [Review Report F-2013-006](#) at paragraph [78], I found that employee statistics do not qualify as personal information as follows:

[78] However, I also find that the remaining information on redaction #35 (Employee Statistics – Detail) should be released as it does not qualify as personal information. This includes the names of SGI employees, their employment status, the job codes and titles, position number and name of supervisor.

[68] As such, I find that the City did not properly apply subsection 28(1) of LA FOIP to the other work-related classifications. I recommend the City release this information to the Applicant within 30 days of receiving this Report.

**6. Was the City’s fee estimate reasonable?**

[69] On May 5, 2023, the City provided the Applicant with the following fee estimate, which also appears to be the final fees charged as noted in the City’s submission:

Fee Type	# of staff	Fee Calculations	Fees
Electronic records – Time to review 714 retrieved records for responsive records. Estimated 498 pages of responsive records	1	1 hour X \$30/hour	\$30.00
Time to create query/report and verify data by Technology (IT)	1	1.5 hours X \$40/hour	\$60.00
Electronic – Email Conversion from .msg to pdf		199 pages X \$0.25/page	\$49.75

Time required to prepare records for disclosure	1	5 hours X \$30/hour	\$150.00
Subtotal			\$289.75
Fees Waived			-\$100
Total Fees			\$189.75
Deposit required – 50% of Total Fees:			\$94.88

[70] Subsections 9(1) and 9(2) of LA FOIP provide as follows:

9(1) An applicant who is given notice pursuant to clause 7(2)(a) is entitled to obtain access to the record on payment of the prescribed fee.

(2) Where the amount of fees to be paid by an applicant for access to records is greater than a prescribed amount, the head shall give the applicant a reasonable estimate of the amount, and the applicant shall not be required to pay an amount greater than the estimated amount.

[71] Subsection 9(2) of LA FOIP requires a local authority to provide a fee estimate where the cost for providing access to the records exceeds the prescribed amount of \$100. This prescribed amount is found in subsection 6(1) of [The Local Authority Freedom of Information and Protection of Privacy Regulations](#) (LA FOIP Regulations) (*Guide to LA FOIP*, Chapter 3, “Access to Records”, updated: May 5, 2023 [*Guide to LA FOIP*, Ch. 3], at page 72).

[72] LA FOIP provides for reasonable cost recovery associated with providing individuals access to records. A “reasonable fee estimate” is one that is proportionate to the work required on the part of the local authority to respond efficiently and effectively to an applicant’s request. A fee estimate is equitable when it is fair and even-handed, that is, when it supports the principle that applicants should bear a reasonable portion of the cost of producing the information they are seeking, but not costs arising from administrative inefficiencies or poor records management practices (*Guide to LA FOIP*, Ch. 3, p. 73).

[73] There are generally three kinds of fees that can be included in a fee estimate:

1. Fees for searching records;
2. Fees for preparing records; and
3. Fees for reproducing records.

***1. Fees for searching records***

[74] Subsection 5(3) of the LA FOIP Regulations describes the fee formula local authorities can apply when estimating a fee for searching or preparing records (*Guide to LA FOIP*, Ch. 3, p. 75).

[75] Fees for search time consists of every half hour of manual search time required to locate and identify responsive records. For example:

- Staff time involved with searching for records.
- Examining file indices, file plans or listings of records either on paper or electronic.
- Pulling paper files /specific paper records out of files.
- Reading through files to determine whether records are responsive.

(*Guide to LA FOIP*, Ch. 3, p. 75).

[76] Search time **does not** include:

- Time spent to copy the records.
- Time spent going from office to office or off-site storage to look for records.
- Having someone review the results of the search.

(*Guide to LA FOIP*, Ch. 3, p. 75).

[77] Generally, the following has been applied:

- It should take an experienced employee 1 minute to visually scan 12 pages of paper or electronic records to determine responsiveness.

- It should take an experienced employee 5 minutes to search one regular file drawer for responsive file folders.
- It should take 3 minutes to search one active email account and transfer the results to a separate folder or drive.

*(Guide to LA FOIP, Ch. 3, p. 75).*

[78] In instances where the above does not accurately reflect the circumstances, the local authority should design a search strategy and test a representative sample of records for time. The time can then be applied to the responsive records as a whole. Where the search for responsive records exceeds one hour, the local authority can charge \$15.00 for every half hour or portion of a half hour in excess of one hour for search or preparation (as per subsection 5(3) of the LA FOIP Regulations *(Guide to LA FOIP, Ch. 3, p. 76)*).

[79] In its fee estimate to the Applicant on May 5, 2023, the City included a \$30.00 charge for one hour of search time. In its description, it indicated it was for time to search through 714 pages to retrieve an estimated 498 pages of responsive records.

[80] From paragraph [77] of this Report, the estimated time for an experienced employee to virtually scan 12 pages of paper or electronic records to determine responsiveness should be 1 minute. Therefore, the estimated search time for City employees to search through 714 records should be 59.5 minutes (714 pages / 12 pages). That is approximately one hour. The City waived \$100 off its total fee estimate. I will address this deduction at paragraph [91] of this Report as it pertains to subsection 5(3) of LA FOIP Regulations.

[81] As indicated in paragraph [69] of this Report, the City estimated one hour for searching an estimated 714 records. I find that the City's fee estimate for search is reasonable.

## ***2. Fees for preparing records***

[82] As noted earlier, subsection 5(3) of the LA FOIP Regulations describes the fee formula local authorities can apply when estimating a fee for searching or preparing records *(Guide to LA FOIP, Ch. 3, p. 76)*.

[83] Preparation includes time spent preparing the record for disclosure including:

- Time anticipated to be spent physically severing exempt information from records.

*(Guide to LA FOIP, Ch. 3, p. 76).*

[84] Preparation time **does not** include:

- Deciding whether to claim an exemption.
- Identifying records requiring severing.
- Identifying and preparing records requiring third party notice.
- Packaging records for shipment.
- Transporting records to the mailroom or arranging for courier service.
- Time spent by a computer compiling and printing information.
- Assembling information and proofing data.
- Photocopying.
- Preparing an index of records.

*(Guide to LA FOIP, Ch. 3, p. 77).*

[85] The test related to reasonable time spent on preparation is generally, it should take an experienced employee two minutes per page to physically sever. In instances where the above test does not accurately reflect the circumstances (i.e., a complex record), the local authority should test the time it takes to sever on a representative sample of records. The time can then be applied to the responsive records as a whole *(Guide to LA FOIP, Ch. 3, p. 77).*

[86] Subsection 5(3) of the LA FOIP Regulations indicate that in estimating the cost of search and preparation of responsive records, local authorities can include a charge of \$15.00 for every half hour in excess of one hour *(Guide to LA FOIP, Ch. 3, p. 77).*

[87] In its fee estimate to the Applicant on May 5, 2023, the City provided the Applicant with a preparation fee estimate of \$150 (5 hours X \$30/hour). In its submission to my office, the

City indicated it spent 30.1 total hours retrieving responsive Outlook and Teams records, converting emails to pdfs and performing redactions. In terms of redactions, the City indicated it performed redactions on 18,775 rows on spreadsheets and on 91 pages on pdfs. Although the City did not indicate specifically how many pages this involved, it would be a reasonable expectation that at least five hours was required for this purpose. I find that the City's preparation portion of its fee estimate of \$150 was reasonable.

[88] Also, in its fee estimate to the Applicant, the City estimated \$60 (1.5 hours X \$40/hour) for time to create query/report and verify data by technology (IT). Under subsection 5(4) of the LA FOIP Regulations, the City can charge for IT services. I find the City's fee estimate of \$60 for time to create query/report and verify data by IT was reasonable.

### ***3. Fees for reproducing records.***

[89] Subsection 5(2) of the LA FOIP Regulations prescribes the fee local authorities can apply. They can charge \$0.25 per page for photocopying or computer printouts (*Guide to LA FOIP*, Ch. 3, p. 7).

[90] The City estimated \$49.75 (199 pages at \$0.25/page for electronic – email conversion from .msg to pdf). This process cannot be described as reproducing records in accordance with LA FOIP Regulations. I find the City's fee estimate of \$49.75 for reproduction was not reasonable.

[91] Given the services the City described in its fee estimate to the Applicant, its total fee estimate was \$289.75. The City, however waived \$100 off this total amount and presented a fee estimate of \$189.75 to the Applicant.

[92] From my calculations in the paragraphs above, the City's fee estimate could have been \$240 (\$30 + \$60 + \$150). The City presented a lower fee estimate of \$189.75 to the Applicant. I find that the City's total fee estimate of \$189.75 was reasonable.

## **IV FINDINGS**

- [93] I find that I have jurisdiction to conduct this review.
- [94] I find that the City properly applied subsection 16(1)(b) of LA FOIP to records 1 to 18, 20 to 33 and 36 to 43.
- [95] I find that the City did not properly apply subsection 16(1)(b) of LA FOIP to record 19.
- [96] I find that the City did not properly apply section 20 of LA FOIP to records 19, 34 and 35
- [97] I find that the City did not properly apply subsection 30(2) of LA FOIP to record 19.
- [98] I find that the City did not properly apply subsection 28(1) of LA FOIP to record 19.
- [99] I find that the City properly applied subsection 28(1) of LA FOIP to employee names, employee numbers as well as employee hire dates and other employment information as described in paragraph [66] of this Report.
- [100] I find that the City did not properly apply subsection 28(1) of LA FOIP to names of employee supervisors, employee categories (e.g., full-time), daily work hours, reason for hiring (e.g., new hire and rehire), assignment categories (e.g., term assignment), and other individuals' work-related classifications (e.g., division worked, bargaining unit, and assigned department) as described in paragraph [67] of this Report.
- [101] I find that the City's total fee estimate of \$189.75 was reasonable.

## **V RECOMMENDATIONS**

- [102] I recommend that the City continue to withhold parts of the records as described in Appendix A of this Report.
- [103] I recommend that the City release record 19 in full within 30 days of receiving this Report.

[104] I recommend the City release the information it withheld in part in records 34 and 35 within 30 days of receiving this Report.

[105] I recommend the City release the parts of records 44 to 53 it improperly withheld as described in paragraph [67] of this Report within 30 days of receiving this Report and withhold the rest.

Dated at Regina, in the Province of Saskatchewan, this 5<sup>th</sup> day of December, 2023.

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

**Appendix A**

<b>Record Number (#)</b>	<b>Description of Record</b>	<b>Number of pages</b>	<b>LA FOIP Exemption(s) Applied</b>	<b>Withheld in part or in full</b>	<b>Recommendation</b>
1	Email communication	1	16(1)(a) and (b) to page 1	In part	Continue to withhold
2	Email communication	3	16(1)(a), (b) to pages 1, 2 and 3, and 30(2) to pages 1 and 2	In part	Continue to withhold
3	Email communication	3	16(1)(a) to pages 2 and 3, and (b) to pages 1, 2 and 3	In part	Continue to withhold
4	Email communication	5	16(1)(a) to pages 3, 4, and 5, and (b) to pages 1, 2, 3, 4 and 5	In part	Continue to withhold
5	Email communication	5	16(1)(a) to pages 1, 2, 3 and 4, (b) to pages 1, 2, 3, 4 and 5, and 30(2) to pages 1, 2, 3 and 4	In part	Continue to withhold
6	Email communication	1	16(1)(b) to page 1	In part	Continue to withhold
7	Email communication	3	16(1)(b) to page 1	In part	Continue to withhold
8	Email communication	3	16(1)(a) to page 1 and (b) to pages 1 and 2	In part	Continue to withhold
9	Email communication	3	16(1)(a) and (b) to pages 1 and 2	In part	Continue to withhold
10	Email communication	3	16(1)(a) and (b) to pages 1 and 2	In part	Continue to withhold
11	Email communication	1	16(1)(a) and (b) to page 1	In part	Continue to withhold

12	Attachment for 1a – Draft letter	1	16(1)(b) and 30(2) to page 1	In part	Continue to withhold
13	Email communication	1	16(1)(a) and (b) to page 1	In part	Continue to withhold
14	Attachment letter to an email	1	16(1)(a), (b), and 30(2) to page 1	In part	Continue to withhold
15	Email communication	5	16(1)(a) and (b) to pages 1, 2, 3, and 4, 30(2) to pages 1, 2, and 3, and 28(1) to page 1	In part	Continue to withhold
16	Attachment – Draft letter	1	16(1)(b) and 30(2) to page 1	In part	Continue to withhold
17	Email communication	1	16(1)(b) to page 1	In part	Continue to withhold
18	Email communication	1	16(1)(b), 20, and 28(1) to page 1	In part	Continue to withhold
19	Email Attachment	3	16(1)(b), 20, 28(1) and 30(2) to pages 1, 2 and 3	In full	Release in full to Applicant
20	Email communication	2	16(1)(a), (b) and 30(2) to page 1	In part	Continue to withhold
21	Email communication	2	16(1)(a), (b), 28(1) and 30(2) to pages 1 and 2	In part	Continue to withhold
22	Email communication	2	16(1)(a), (b), and 30(2) to page 1	In part	Continue to withhold
23	Email communication	4	16(1)(b), 20, and 28(1) to page 1	In part	Continue to withhold
24	Email communication	3	16(1)(a), (b), and 30(2) to page 1	In part	Continue to withhold
25	Draft letter	1	16(1)(a), (b), and 30(2) to pages 1 to 5	In full	Continue to withhold

26	Email communication	2	16(1)(b), 20, and 28(1) to page 1	In part	Continue to withhold
27	Email communication	2	16(1)(b) and 30(2) to page 1	In part	Continue to withhold
28	Email communication	1	16(1)(b) to page 1	In part	Continue to withhold
29	Draft letter	6	16(1)(a), (b), and 30(2) to pages 1 to 6	In full	Continue to withhold
30	Draft letter	6	16(a), (b), and 30(2) to pages 1 to 6	In full	Continue to withhold
31	Email communication	2	16(1)(b), and 30(2) to page 1	In part	Continue to withhold
32	Email communication	1	16(1)(a), (b) and 30(2) to page 1	In part	Continue to withhold
33	Email communication	2	16(1)(b) to page 1	In part	Continue to withhold
34	Email communication	1	16(1)(b) and 20 to page 1	In part	Release to Applicant
35	Email communication	1	16(1)(b) and 20 to page 1	In part	Release to Applicant
36	Email communication	1	16(1)(a) and (b) to page 1	In part	Continue to withhold
37	Email communication	1	16(1)(b) to page 1	In part	Continue to withhold
38	Draft letter	1	16(1)(b) and 30(2) to page 1	In part	Continue to withhold
39	Draft letter	1	16(1)(b) and 30(2) to page 1	In part	Continue to withhold
40	Email communication	1	16(1)(b) and 30(2) to page 1	In part	Continue to withhold
41	Email communication	1	16(1)(a), (b), and 20 to page 1	In part	Continue to withhold
42	Meeting note	3	16(1)(a) and (b) to page 3	In part	Continue to withhold

43	Email attachment	1	16(1)(b) and 30(2) to page 1	In part	Continue to withhold
44	Large spreadsheet with 3356 rows – Monthly HR Report results	1	28(1) to rows 4-3154 and rows 3156 to 3356	In full	Release parts of record described in paragraph [67] of this Report and withhold the rest
45	Large spreadsheet with 201 rows	1	28(1) to rows 17-144 and rows 146-201	In full	Release parts of record described in paragraph [67] of this Report and withhold the rest
46	Large spreadsheet with 457 rows	1	28(1) to rows 15-124 and rows 126-457	In full	Release parts of record described in paragraph [67] of this Report and withhold the rest
47	Large spreadsheet with 3356 rows	1	28(1) to rows 4-3132 and rows 3134-3356	In full	Release parts of record described in paragraph [67] of this Report and withhold the rest
48	Large spreadsheet with 201 rows	1	28(1) to rows 17-144 and rows 146-201	In full	Release parts of record described in paragraph [67] of this Report and withhold the rest
49	Large spreadsheet with 482 rows	1	28(1) to rows 15-132 and rows 134-482	In full	Release parts of record described in paragraph

					[67] of this Report and withhold the rest
50	Large spreadsheet with 3426 rows	1	28(1) to rows 4-3165 and rows 3167-3426	In full	Release parts of record described in paragraph [67] of this Report and withhold the rest
51	Large spreadsheet with 540 rows	1	28(1) to rows 15-150 and rows 152-540	In full	Release parts of record described in paragraph [67] of this Report and withhold the rest
52	Large spreadsheet with 3425 rows	1	28(1) to rows 4-3144 and rows 3146-3425	In full	Release parts of record described in paragraph [67] of this Report and withhold the rest
53	Large spreadsheet with 3422 rows	1	28(1) to rows 4-3115 and rows 3117-3422	In full	Release parts of record described in paragraph [67] of this Report and withhold the rest