



REVIEW REPORT 161-2022, 162-2022

Saskatoon Police Service

May 9, 2023

Summary:

The Applicant submitted two access to information requests to the Saskatoon Police Service (SPS). SPS denied access to five records in full and to one record in part pursuant to subsection 14(1)(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). SPS also denied records in part pursuant to subsection 28(1) of LA FOIP. The Applicant was not satisfied with SPS's decision and requested a review by the Commissioner. The Commissioner found that SPS properly applied subsection 14(1)(c) of LA FOIP to parts of the record. The Commissioner also found that SPS did not properly apply subsection 14(1)(c) of LA FOIP to other parts of the records because it would be an absurd result to do so as some portions of the records the Applicant already had. The Commissioner recommended that SPS continue to withhold the records pursuant to subsection 14(1)(c) of LA FOIP, except where it would be an absurd result to do so.

I BACKGROUND

[1] On July 21 and 22, 2022, the Saskatoon Police Service (SPS) received two access to information requests (Request 1 and Request 2 respectively) from the Applicant as follows:

July 21 – Request 1 (IPC file 161-2022)/SPS file 2022-0166:

arrest documents of incident info [incident information number] dated Oct.28,2017
Names and badge numbers involved in my arrest
dash cam footage of 2 vehicles on scene and the vehicle used in transporting me when I was detained. Audio and video please and thank you.

July 22 – Request 2 (IPC file 162-2022)/SPS file 2022-0167:

I am requesting all relevant information regarding an incident of arrest regarding myself at Mayfair Drugs inside the methadone clinic attached. Address 504-33rd street west. I was charged with possession of a controlled substance “fentanyl” in 2017. I do

not recall the date but it should come up on your database. I would like the name of the arresting officer and the incident number and charges and any body cam or mic or transport vehicle in car footage recorded that day. Please and Thank you.

[2] On July 22, 2022, SPS sent an email to the Applicant to clarify some parts of Request 2 as follows:

...

Could you please provide additional information on the following:

- We did a preliminary search of our database but were unable to locate an occurrence from 2017 that matches the description provided. We did locate an occurrence that matches the description and address which occurred on May 31, 2018. Is this the occurrence that you are requesting records for?
- In your request you indicate that you want “the name of the arresting officer and the incident number and charges and any body cam or mic or transport vehicle in car footage”. I need to confirm if you only want the information that I’ve quoted here or are you wanting a copy of the occurrence report (which would include the listed information)?

[3] Also on July 22, 2022, the Applicant responded to SPS’s request as follows:

Yes, that would be the one on May 31, 2018 and I would like the incident report of arrest, the officers name and badge number, in car footage while being transported to detention and any body cam or mic recordings please and thank you...

[4] On July 29, 2022, SPS sent a section 7 decision letter to the Applicant regarding Request 1 advising that it was denying access to the records pursuant to subsections 14(1)(c), (j), (k) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[5] On August 5, 2022, SPS provided its section 7 decision letter to the Applicant for Request 2. It advised the Applicant it was withholding records pursuant to subsections 13(1)(b), 14(1)(c), (j), (k) and 28(1) of LA FOIP.

[6] On August 10, 2022, the Applicant sent a request for review for Requests 1 and 2 to my office.

- [7] On August 16, 2022, the Applicant sent a submission to my office to support their position that the records should be released.
- [8] On August 18, 2022, SPS sent two revised section 7 decision letters to the Applicant for Requests 1 and 2. In the revised versions, SPS added subsection 22(3)(a.1) of LA FOIP and section 8.1 of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) for authority to withhold the records.
- [9] On August 30, 2022, my office sent notifications to the Applicant and SPS of my office’s intent to undertake reviews of SPS’s application of subsections 13(1)(b), 14(1)(c), (j), (k), 28(1) and 22(3)(a.1) of LA FOIP and section 8.1 of the LA FOIP Regulations for Requests 1 and 2. My office requested SPS provide a copy of the records and its submission to my office.
- [10] On October 28, 2022, SPS sent my office copies of the records and submissions for Requests 1 and 2. In both of its submissions, SPS indicated it was dropping its reliance on subsection 22(3)(a.1) of LA FOIP and section 8.1 of the LA FOIP Regulations. In its submission for Request 2, SPS further advised that it had released additional records to the Applicant.

II RECORDS AT ISSUE

- [11] The records remaining at issue total 113 pages of paper records. Records 1 and 2 include paper records titled, “Detailed Call Summary” and “General Occurrence Hardcopy” respectively. There are also video and audio recordings of a police arrest totaling 153 minutes and 28 seconds. A breakdown of the records is found in Table 1 below:

Table 1 – Description of Records

161-2022			
Record	Page number or Video/Audio Minutes	Description	LA FOIP Exemptions

1	Pages 1 to 6	Call Summary Details	14(1)(c) in full, 28(1) in part
2	Pages 7 to 66	General Occurrence Report	14(1)(c) in full, 14(1)(j) in part, 14(1)(k) in part, 28(1) in part
3	0:00-34:31 (minutes)	In-car dash camera video + audio recording (Police vehicle 1)	14(1)(c) in full, 14(1)(j) in part, 14(1)(k) in part, 28(1) in part
4	0:00-34:31 (minutes)	In-car rear seat camera video + audio recording (Police vehicle 1)	14(1)(c) in full, 14(1)(j) in part, 14(1)(k) in part, 28(1) in part
5	0:00-42:13 (minutes)	In-car dash camera video + audio recording (Police vehicle 2)	14(1)(c) in full, 14(1)(j) in part, 14(1)(k) in part, 28(1) in part
6	0:00-42:13 (minutes)	In-car rear seat camera video + audio recording (Police vehicle 2)	14(1)(c) in full, 14(1)(j) in part, 14(1)(k) in part, 28(1) in part
162-2022			
7	4, 5, 8, 10, 11, 12, 14, 15, 16, 18, 19, 20, 23, 25, 27, 30, 31, 33, 34, 38, 39, 40, 41, 42, 45, 51, 54, 55, 56, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 74, 75, 76, 77, 79, 83, 84	General Occurrence Report – May 31, 2018	13(1)(b) in part, 14(1)(c) in part, 14(1)(j) in part, 14(1)(k) in part, 28(1) in part

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[12] SPS qualifies as a “local authority” pursuant to subsection 2(f)(viii.1) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did SPS properly apply subsection 14(1)(c) of LA FOIP?

[13] SPS withheld in full Records 1, 2, 3, 4, 5 and 6 pursuant to subsection 14(1)(c) of LA FOIP. SPS withheld portions of Record 7 (pages 8, 10, 11, 12, 14, 15, 38, 39, 40, 41, 42, 56, 63 and 64) pursuant to subsection 14(1)(c) of LA FOIP. The records are Call Summary Details, General Occurrence Reports and audio and video recordings.

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

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

...

(c) interfere with a lawful investigation or disclose information with respect to a lawful investigation.

[15] Subsection 14(1)(c) of LA FOIP is a discretionary class-based and harm-based exemption. Meaning it contains both a class and harm-based component. It permits refusal of access in situations where the release of a record could interfere with a lawful investigation or disclose information with respect to a lawful investigation. The following two-part test can be applied:

1. Does the local authority's activity qualify as a "lawful investigation"?
2. Does one of the following exist?
 - a) Could release of the following information interfere with a lawful investigation?
 - b) Could release disclose information with respect to a lawful investigation?

(*Guide to LA FOIP*, Chapter 4, "Exemptions from the Right of Access", updated April 29, 2021 [*Guide to LA FOIP*, Ch. 4], pp. 52-54).

1. Does the local authority's activity qualify as a "lawful investigation"?

[16] A lawful investigation is an investigation that is authorized or required and permitted by law. The local authority should identify the legislation under which the investigation is occurring. The investigation can be concluded, active and ongoing or be occurring in the future. It is not limited to investigations that are conducted by a local authority. In other

words, it can include investigations conducted by other organizations (e.g., a police investigation) (*Guide to LA FOIP*, Ch. 4, p. 52).

[17] In its submission to my office, SPS asserted the following:

Request 1 (IPC file 161-2022/SPS file 2022-0166)

The records were created in 2017 as a result of a call for service in relation to the Applicant, where a member of the public had called police as the Applicant had allegedly threatened to harm individuals in a residence and was refusing to leave. The Applicant was charged with various offences contrary to the *Criminal Code*, and was later convicted of one of those offences. Therefore, SPS submits that the SPS' activities in response to the call for service constituted a lawful investigation, and the first part of the test is met...

It should be noted that the police's powers of investigation are broad and stem from various pieces of legislation both provincially and federally, and to narrow the issue down to a specific section of legislation would not be an accurate reflection of those powers. That being said, among the police powers of investigation, section 36(2) of *The Police Act, 1990*, provide the SPS with the authority to conduct lawful investigations and enforce the respective laws.

Request 2 (IPC file 162-2022/SPS file 2022-0167):

The Guide defines lawful investigation as an "investigation that is authorized or required and permitted by law". The incident that triggered the creation of the records was a call for service in which an on-duty officer observed the Applicant, who had an active warrant at the time, at a local drug store. The Officer advised the Applicant that he was under arrest for his outstanding warrant, and the Applicant began to struggle with the officer. The Applicant was arrested and drugs were located on his person. The Applicant was charged with various offences under the Criminal Code. Therefore, the SPS submits that the first part of the test is met...

As a police service, many of the activities of the SPS qualify as a lawful investigation. The SPS withheld the records, including in-car camera footage, in full as the matter is currently before the Public Complaints Commission due to an ongoing public complaint. The Applicant had submitted a public complaint in relation to what he believed to be an unlawful stop, excessive force after an unlawful arrest, unlawful/forcible confinement, and failure to read the Applicant his rights upon arrest. The Public Complaints Commission ("PCC") receives, investigates and reviews complaints against municipal police in Saskatchewan. Sections 39 and 45 of *The Police Act, 1990* ("the Police Act") provides the PCC with the authority to conduct investigations into a complaint against a member. When a complaint is received, the PCC will determine whether an investigation should be conducted by the PCC itself, the police service against whose member the complaint was made, the police service with an outsider observer, or a separate police service, as per subsection 45(3) of the Police Act. In this case, a public complaint was provided to the PCC by the Applicant,

and the PCC has maintained carriage of the investigation. The SPS' role in this investigation is to provide records to the PCC relative to the complaint, and to supply further information to inform the investigation as required pursuant to subsection 39(3) of the Police Act. Should the PCC determine that the complaint against the members was founded, the members may face discipline under the Police Act and *The Municipal Police Discipline Regulations, 1991*, up to Criminal Code charges. Therefore, the SPS submits that the first part of the test is met.

[18] Based on SPS' submissions, it appears the investigations it is relying on for the first part of the test are SPS's own investigation involving the Applicant and the subsequent investigation by the PCC following a complaint by the Applicant. I note that in my office's [Review Report 254-2022](#) at paragraphs [28] and [29], I found that PCC investigations into possible violations of *The Police Act, 1990* qualify as lawful investigations. In my office's [Review Report 066-2020](#) and [Review Report 111-2022](#), I found that police investigations into possible violations of the *Criminal Code* qualify as lawful investigations.

[19] It is also important to address whether the lawful investigation needs to be active ongoing or whether closed investigations would still qualify for subsection 14(1)(c) of LA FOIP. In my office's [Review Report 210-2022](#) at paragraph [21], I stated:

My office also notes that in the Queen's Bench for Saskatchewan decision, *Geoff Leo v Global Transportation Hub Authority and Brightenvue Developments Internal Ltd.*, [2018] SKQB 150, at paragraph [24], Justice Kalmakoff stated:

[24] The jurisprudence also suggests that the exemption in s. 15(1) apply to more than just specific ongoing investigations or proceedings: *Ontario (Ministry of Community Safety & Correctional Services) v Ontario (Information and Privacy Commissioner)* (2007), 231 OAC 230 (Ont Sub Ct). in *Evenson v Saskatchewan (Ministry of Justice)*, 2013 SKQB 296, 428 Sask R 37, Justice Gabrielson also noted that there is no requirement in s 15(1)(k) that the law enforcement matter in question be ongoing before the exemption is deemed to apply. **This, in my view, would apply to s 15(1)(c) as well. In short, the exemptions in s. 15(1) apply to both active and closed matters.**

[Emphasis added]

[20] After reviewing the Records, and following the same approach as past reports, I find that the activities of the SPS and the PCC qualify as lawful investigations in this matter.

Therefore, the first part of the test for subsection 14(1)(c) of LA FOIP is met for both the paper and video/audio records.

2. Does one of the following exist?

...

b. Could release disclose information with respect to a lawful investigation?

[21] The SPS asserted in both submissions for Requests 1 and 2 that release of the records could interfere with a lawful investigation and it also asserted release could disclose information with respect to a lawful investigation. I will consider first whether release could disclose information with respect to a lawful investigation.

[22] Subsection 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. (*Guide to LA FOIP*, Ch. 4, p. 52).

[23] Therefore, it is only necessary for the local authority to demonstrate that the information in the record is information with respect to a lawful investigation to meet this part of the test (*Guide to LA FOIP*, Ch. 4, p. 53).

[24] To qualify, the records need to disclose information “with respect” to a lawful investigation. “With respect to” are words of the of the widest possible scope; the phrase is probably the widest of any expression intended to convey some connection between two related subject matters (*Guide to LA FOIP*, Ch. 4, p. 53).

[25] In support of its position that releasing the records could disclose information with respect to a lawful investigation, SPS stated as follows:

Request 1 (IPC file 161-2022/SPS file 2022-0166):

...

Subsection 14(1)(c) provides that information may be withheld if disclosure would reveal information with respect to a lawful investigation. The initial call for service was for the purpose of investigating a complaint of a domestic disturbance in progress –

specifically, the Applicant had attended to a residence and had allegedly threatened to harm individuals at the residence and was refusing to leave. Upon attendance to the call, the Applicant attempted to leave the scene and was subsequently stopped by police. The Applicant refused to exit his vehicle or comply with orders given by police. The Applicant was subsequently charged with assault [sic] a peace officer while threatening to use a weapon, obstruction, failure to comply with an undertaking, and possession of a weapon, contrary to sections 270.01(1)(a), 129(a), 145(3) and 88 of the *Criminal Code*. The Applicant was later convicted of the charge under section 88 of the *Code*.

Some examples of the information withheld under subsection 14(1)(c) include, but are not limited to:

- Details of the call for service...
- Officer's explanation of a potential weapon being present...
- Items seized from the scene...
- Officer's interactions/interviews with involved individuals while the Applicant was not present...
- Discussions between members and the Crown...

The SPS submits that the second part of the test has been met.

In-car Camera Footage

Audio portions of the in-car camera ("ICC") video was withheld pursuant to subsection 14(1)(c) in the above-noted circumstances. Specifically, the portions of the ICC footage that was withheld pursuant to subsection 14(1)(c) contains the following:

- Conversations between police officers regarding the investigation;
- Audio of the complainant (not the Applicant) providing a witness statement to an officer; and
- Unrelated calls for service over the police radio

Request 2 (IPC file 162-2022/SPS file 2022-0167):

Police services and the Ministry of Corrections as well as the Ministry of Justice share information on a daily basis due to the nature of the work that each agency does, and there is a mutual understanding that the information being shared is kept confidential. The information withheld pursuant to this subsection as noted in the above table was provided to the SPS for the purposes of the investigative and prosecutorial process following the charges laid on the Applicant. Some of the withheld information was also provided to the SPS so that the SPS could be directed to return property seized from the Applicant during his arrest.

- [26] For the second part of the test for subsection 14(1)(c) of LA FOIP to be applicable, the records must be connected somehow to the lawful investigations. The records are Call Summary Details, General Occurrence Reports and audio and video recordings.
- [27] In this case, both the SPS and the PCC had investigations occurring at different times. Further, the records relate to those investigations. As such, the second part of the test is met. I find that SPS properly applied subsection 14(1)(c) of LA FOIP. I recommend SPS continue to withhold this information pursuant to subsection 14(1)(c) of LA FOIP. There are two exceptions to this finding.
- [28] On August 16, 2022, my office received a submission from the Applicant to support why they believe they should receive access to the records requested from SPS. Included in the Applicant's submission was a police dash cam video + audio recording of parts of Record 3 described in paragraph [11] of this Report. The video recording submitted by the Applicant has the same elements as the following section of Record 3 – minutes 02:04 to 08:33. Since the Applicant has received that part of Record 3 already, it would not be appropriate to withhold it from the Applicant now. The recorded video + audio content in Record 5 is similar to that in Record 3. Although captured from a different camera angle, minutes 00:48 to 03:38 of Record 5 capture SPS officers interacting/questioning the Applicant and SPS officers arresting the Applicant. Although minutes 00:48 to 03:38 of Record 5 also disclose information with respect to a lawful investigation if released, in past reports (e.g., [Review Report 132-2022](#) at paragraph [17], [Review Report 164-2021](#) at paragraph [28] and [Review Report 215-2020](#) at paragraph [32]), I have stated that it is an “absurd result” to withhold information that an applicant has supplied or would otherwise know. The Applicant is the one who was questioned by SPS officers and arrested by the same officers in minutes 00:48 to 03:38 of Record 5. Withholding such information would lead to an absurd result in that the Applicant was present and knew the information within that part of Record 5. For minutes 02:04 to 08:33 of Record 3, it is also absurd to withhold it as the Applicant has the same elements in another video already. As such, I find it would be an absurd result to withhold minutes 02:04 to 08:33 of Record 3 and minutes 00:48 to 03:38 of Record 5 from the Applicant and recommend SPS give access to those portions, in accordance with subsection 10(3) of LA FOIP within 30 days of issuance of this Report.

[29] As I have found that release of the records could disclose information with respect to a lawful investigation, I do not need to consider whether release of the records could interfere with a lawful investigation. Further, as a result of my findings on subsection 14(1)(c) of LA FOIP, I do not need to consider subsections 13(1)(b), 14(1)(j), (k) and 28(1) of LA FOIP.

IV FINDINGS

[30] I find that I have jurisdiction to conduct this review.

[31] I find that SPS properly applied subsection 14(1)(c) of LA FOIP to parts of the records.

[32] I find that SPS did not properly apply subsection 14(1)(c) of LA FOIP to the parts of the video/audio in Records 3 and 5 where the Applicant was questioned and arrested by SPS as the Applicant already had this information and it would be an absurd result to withhold it.

V RECOMMENDATION

[33] I recommend that SPS give access to those portions, in accordance with subsection 10(3) of LA FOIP to those portions of the video + audio recording for Records 3 and 5 described in paragraph [28] of this Report within 30 days of issuance of this Report and continue to withhold the rest of the records.

Dated at Regina, in the Province of Saskatchewan, this 9th day of May, 2023.

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