



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 170-2024

Saskatoon Public Library

January 8, 2025

Summary:

The Applicant submitted an access to information request to Saskatoon Public Library (SPL) regarding the departure of the CEO of SPL. Pursuant to subsections 15(1)(b)(i), (ii), 16(1)(c), 17(1)(d), (e), 21(a) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), SPL withheld the records in full. The Applicant requested a review by the Commissioner. The A/Commissioner found that SPL properly applied subsection 16(1)(c) of LA FOIP to a portion of the information. However, he also found that some content within the record is similar to information that had already been publicly revealed and, therefore, does not qualify for exemption. He recommended that, within 30 days of issuance of this Report, SPL release pages 2 and 3 to the Applicant. Furthermore, he recommended SPL reconsider the exercise of its discretion in its application of subsection 16(1)(c) of LA FOIP and conduct a line-by-line analysis of pages 1, 4 and 5, apply grey or black severance to the portions to which SPL continues to apply subsection 16(1)(c) of LA FOIP, and release the remainder to the Applicant. To that end, he recommended that, within 30 days of issuance of this Report, SPL ensure its policies and procedures include how to process an access to information request in accordance with section 8 of LA FOIP, including conducting a line-by-line analysis and applying grey or black severance.

I BACKGROUND

[1] On February 29, 2024, Saskatoon Public Library (SPL) received the following access to information request from the Applicant:

Any and all information from the in-camera session of the January 17, 2024 SPL board meeting, especially regarding matters pertaining to [the CEO's] resignation or leaving her position as CEO of SPL and any discussion about or related to [the CEO's]

resignation or leaving [their] position as CEO of SPL, including all notes taken by any SPL board members or employees i.e. whoever was taking notes for this SPL board meeting.

- [2] On April 2, 2024, SPL emailed the Applicant its section 7 decision, outlining that the requested records were withheld in their entirety pursuant to subsections 15(1)(b)(i), (ii), 16(1)(c), 17(1)(d), (e), 21(a) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [3] On June 17, 2024, the Applicant emailed my office to request a review.
- [4] On July 8, 2024, my office provided notice to SPL and the Applicant of my intent to undertake a review. My office's notice to SPL requested a copy of the records and an index of records by August 7, 2024, and its submission to support the application of the exemptions by September 6, 2024. The Applicant was also invited to provide a submission by this date.
- [5] On August 6, 2024, SPL provided its submission to my office, including an index of records and the records at issue. No submission was provided by the Applicant.

II RECORDS AT ISSUE

- [6] SPL identified five pages of responsive records, which it withheld in full, pursuant to subsections 15(1)(b)(i), (ii), 16(1)(c), 17(1)(d), (e), 21(a) and 28(1) of LA FOIP.
- [7] In its index of records, SPL described the records as follows:
- Page 1: "In-camera Board Minutes of meeting on January 17, 2024, including present board members, approval of agenda, new business personnel, and adjournment."
 - Pages 2 through 5: "Notes gathered by SPL board member, [name redacted], regarding the Board Meeting on January 17, 2024".

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[8] SPL is a “local authority” as defined by subsection 2(1)(f)(vi) of LA FOIP. Therefore, I find I have jurisdiction to conduct this review.

2. Did SPL properly apply subsection 16(1)(c) of LA FOIP?

[9] SPL applied subsection 16(1)(c) of LA FOIP to the entire record, without severance.

[10] Subsection 16(1)(c) 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:

...

(c) positions, plans, procedures, criteria, or instructions developed for the purpose of contractual or other negotiations by or on behalf of the local authority, or considerations that relate to those negotiations

[11] As a discretionary, class-based provision, subsection 16(1)(c) of LA FOIP permits refusal of access in situations where release of a record could reasonably be expected to disclose positions, plans, procedures, criteria, or instructions developed for the purpose of contractual or other negotiations by or on behalf of a local authority. It also covers considerations related to those negotiations.

[12] The Supreme Court of Canada addressed the purpose of the equivalent of section 16 in Ontario’s *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, subsection 3(1) in *John Doe v. Ontario* (Finance), (2014):

The purpose of this provision is to preserve an effective and neutral public service so as to permit public servants to provide full, free and frank advice... Failing to exempt such material risks having advice or recommendations that are less candid and

complete, and the public service no longer being perceived as neutral ... Political neutrality, both actual and perceived, is an essential feature of the civil service in Canada.

(*Guide to FOIP*, Chapter 4, “Exemptions from the Right of Access,” updated April 8, 2024 [*Guide to FOIP*, Ch. 4], pp. 125-127)

[13] My office uses the following two-part test when determining if subsection 16(1)(c) of LA FOIP applies:

1. Does the record contain positions, plans, procedures, criteria or instructions?
 - a. developed for the purpose of contractual or other negotiations
 - b. by or on behalf of the local authority
2. Or does the record contain considerations that relate to those negotiations?

[14] Although this test has two parts, only one part of the test must be met. SPL has substantiated its arguments for both parts of the test, but I will first consider the second part of the test.

1. Or does the record contain considerations that relate to those negotiations?

[15] In its submission, SPL asserted:

The Records satisfy the test for Section 16(1)(c) as follows:

- (a) The Records contain plans and instructions. The Records contain an overview of SPL’s position and plans regarding the termination of an SPL employee, including the associated negotiations.
- (b) The Records contain considerations that relate to negotiations. The Records include considerations relating to the negotiation with the employee, including, for example, years of service and leadership.

Page 1

[16] My office’s *Guide to LA FOIP*, Ch. 4, defines “consideration” at page 121:

A “consideration” is a careful thought; a fact taken into account when making a decision. Thus, a record identifying the facts and circumstances connected to positions,

plans, procedures, criteria or instructions could also fall within the scope of this provision.

[17] SPL refers to page 1 as the “In-camera Board Minutes.” From a review of the record, page 1 constitutes considerations. Specifically, page one identifies that the SPL board discussed matters related to personnel, which I interpret as facts and circumstances that were taken into consideration. On the face of the record, it is clear these facts and circumstances are also connected to positions, plans and instructions related to making decisions.

[18] My office’s *Guide to LA FOIP*, Ch. 4, defines “negotiation” at pages 121 and 122:

A “negotiation” is a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. It can also be defined as dealings conducted between two or more parties for the purpose of reaching an understanding. It connotes a more robust relationship than “consultation.” It signifies a measure of bargaining power and a process of back-and-forth, give-and-take discussion.

...

The contractual or other negotiations can be concluded, ongoing or future negotiations.

[19] From a review of the information in page 1, it appears there is a negotiation occurring. Specifically, page one references authorization for negotiating terms of employment for two SPL staff members. On the face of the record, it is clear these negotiations are between two or more parties in an attempt to reach an agreement on a disputed matter.

[20] My office’s *Guide to LA FOIP*, Ch. 4, defines “relates to” at page 121:

“Relates to” should be given a plain but expansive meaning. The phrase should be read in its grammatical and ordinary sense. There is no need to incorporate complex requirements (such as “substantial connection”) for its application, which would be inconsistent with the plain unambiguous meaning of the words of the statute.

[21] It appears page 1 contains considerations that relate to negotiations that were occurring. I draw this conclusion because the considerations are facts and circumstances related to making decisions about the negotiation around the terms of employment for SPL staff.

Based on information that is publicly available, I conclude these negotiations have concluded.

- [22] As such, I find page 1 has met the test. I find SPL appropriately applied subsection 16(1)(c) of LA FOIP to page 1. I recommend SPL continue to withhold page 1 from the Applicant, pursuant to subsection 16(1)(c) of LA FOIP.

Pages 2 and 3

- [23] SPL refers to pages 2 and 3 as part of the “Notes gathered by SPL board member, [name redacted], regarding the Board Meeting on January 17, 2024.” On the face of the record, it is clear these notes document information that is very similar to the minutes from the public portion of the board meeting on January 17, 2024, in addition to material SPL has made publicly available regarding its board, its programs, its policies, and projects.

- [24] In previous cases, such as my office’s [Review Report 023-2015](#) at paragraph [30], I found that content that is similar to information that had already been publicly revealed does not qualify for exemption. I am of the same view in this case; pages 2 and 3 do not qualify for exemption. I, therefore, recommend that SPL release pages 2 and 3 to the Applicant within 30 days of issuance of this Report.

Page 4

- [25] Page 4 is a page of the notes gathered by an SPL board member regarding the Board Meeting on January 17, 2024. From a review of the information on page 4, this constitutes considerations as defined above. Specifically, page 4 documents facts and circumstances taken into consideration by SPL in terms of staff members’ terms of employment. This is evident by references to employment history, performance reviews and consultation with a lawyer. On the face of the record, it is clear these considerations are also connected to positions, plans and instructions related to making decisions about terms of employment. There also appears to be considerations on page 4 related to a construction project. Specifically, fundraising and project complications are being considered.

[26] From a review of the information on page 4, it appears there are two separate negotiations in which SPL was involved at the time. Specifically, page 4 references the aforementioned negotiations around terms of employment that was being negotiated between SPL and employees. Based on information that is publicly available, I infer these negotiations are now concluded. Furthermore, page 4 also references negotiations around a construction project that was occurring between SPL, the City of Saskatoon and Ledcor. In this case, based on information that is publicly available, I conclude these negotiations are still ongoing.

[27] In conclusion, I find that page 4 contains considerations that relate to negotiations. As such, I find page 4 has met the test and SPL has appropriately applied subsection 16(1)(c) of LA FOIP to page 4. I recommend SPL continue to withhold page 4 from the Applicant.

Page 5

[28] Page 5 is the final page of the notes gathered by an SPL board member regarding the Board Meeting on January 17, 2024. From a review of the record, page 5 constitutes considerations. Like in the case of page 4, page 5 documents facts and circumstances taken into consideration regarding SPL staff members' terms of employment, as evident by references to an individual's years of service, contemplation of termination timelines and evaluation of interim staffing. On the face of the record, it is clear these facts and circumstances are also connected to positions, plans and instructions related to making decisions about terms of employment.

[29] From a review of the information on page 5, it appears the aforementioned negotiation around terms of employment was occurring. Based on information that is publicly available, I infer these negotiations are now concluded.

- [30] In conclusion, page 5 appears to contain considerations that relate to a negotiation. As such, I find page 5 has met the test and SPL has appropriately applied subsection 16(1)(c) of LA FOIP. I recommend SPL continue to withhold page 5 from the Applicant.
- [31] As I have found subsection 16(1)(c) of LA FOIP was properly applied to pages 1, 4 and 5, I do not need to consider SPL's application of subsections 15(1)(b)(i), (ii), 17(1)(d), (e), 21(a), and 28(1) of LA FOIP.
- [32] However, it is worth re-stating that SPL has taken a blanket approach to withholding the record from the Applicant in full. I would encourage SPL to reconsider whether the applicant's request may be satisfied by severing the record and providing the Applicant with as much information as is reasonably practical. I recommend SPL reconsider the exercise of its discretion in its application of subsection 16(1)(c) of LA FOIP and conduct a line-by-line analysis of pages 1, 4 and 5, apply grey or black severance to the portions to which SPL continues to apply subsection 16(1)(c) of LA FOIP and release the remainder to the Applicant.
- [33] Section 8 of LA FOIP provides:
- 8** Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused.
- [34] On November 29, 2024, SPL advised my office that it did not possess any policy or procedure documents for the processing of records and fulfilling obligations under section 8 of LA FOIP.
- [35] To that end, I recommend that, within 30 days of issuance of this Report, SPL ensure its policies and procedures include how to process an access to information request in accordance with section 8 of LA FOIP, including conducting a line-by-line analysis and applying grey or black severance. For guidance, SPL should view my office's webinar, "[Modern Age Severing Made A Lot Easier.](#)"

IV FINDINGS

- [36] I find that I have jurisdiction to conduct this review.
- [37] I find that SPL properly applied subsection 16(1)(c) of LA FOIP to the information withheld on pages 1, 4 and 5.
- [38] I find that the content on pages 2 and 3 is similar to information that had already been publicly revealed and, therefore, does not qualify for exemption.

V RECOMMENDATIONS

- [39] I recommend that, within 30 days of issuance of this Report, SPL release pages 2 and 3 to the Applicant.
- [40] I recommend SPL reconsider the exercise of its discretion in its application of subsection 16(1)(c) of LA FOIP and conduct a line-by-line analysis of pages 1, 4 and 5, apply grey or black severance to the portions to which SPL continues to apply subsection 16(1)(c) of LA FOIP and release the remainder to the Applicant.
- [41] I recommend that, within 30 days of issuance of this Report, SPL ensure its policies and procedures include how to process an access to information request in accordance with section 8 of LA FOIP, including conducting a line-by-line analysis and applying grey or black severance.

Dated at Regina, in the Province of Saskatchewan, this 8th day of January, 2025.

Ronald J. Kruzeniski, KC
A/Saskatchewan Information and Privacy
Commissioner

Appendix

Page Number	LA FOIP Exemptions Applied	Description of Record	IPC Findings	IPC Recommendations
1	15(1)(b) 16(1)(c) 17(1)(d) 17(1)(e) 21(a) 28(1)	Finalized minutes of in-camera board meeting on January 17, 2024	Subsection 16(1)(c) of LA FOIP properly applied	Conduct a line-by-line analysis and sever to comply with section 8 of LA FOIP
2	15(1)(b) 16(1)(c) 17(1)(d) 17(1)(e) 21(a) 28(1)	Hand-written notes from in-camera board meeting on January 17, 2024	Similar information has already been revealed publicly	Release
3	15(1)(b) 16(1)(c) 17(1)(d) 17(1)(e) 21(a) 28(1)	Hand-written notes from in-camera board meeting on January 17, 2024	Similar information has already been revealed publicly	Release
4	15(1)(b) 16(1)(c) 17(1)(d) 17(1)(e) 21(a) 28(1)	Hand-written notes from in-camera board meeting on January 17, 2024	Subsection 16(1)(c) of LA FOIP properly applied	Conduct a line-by-line analysis and sever to comply with section 8 of LA FOIP
5	15(1)(b) 16(1)(c) 17(1)(d) 17(1)(e) 21(a) 28(1)	Hand-written notes from in-camera board meeting on January 17, 2024	Subsection 16(1)(c) of LA FOIP properly applied	Conduct a line-by-line analysis and sever to comply with section 8 of LA FOIP