



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 177-2023

City of Saskatoon

October 27, 2023

Summary: The Applicant requested a review of the decision of the City of Saskatoon (City) to withhold documents pursuant to subsection 16(1)(b) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), as well as its search efforts. The Commissioner found that subsection 16(1)(b) of LA FOIP applies to the withheld portions of the record, the City did not follow its policies and procedures for records management and retention policies and that the City performed a reasonable search. The Commissioner recommended that the City continue to withhold portions of the record withheld under subsection 16(1)(b) of LA FOIP, provide regular annual training to its staff on its records management and retention policies and take no further action regarding its search efforts.

I BACKGROUND

[1] On June 1, 2023, the Applicant made the following access to information request pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the City of Saskatoon (City):

Information on the creation of the Community Safety and Well-Being (CSWB) Exec (including, but not limited to, creation date, mandate, composition, meeting schedule, reporting process).

Copies of all agendas, minutes and notes from the CSWB Exec, including handwritten notes, since January of 2020 to present-day.

- [2] On June 5, 2023, the City reached out to the Applicant who agreed to amend the scope of the request to:

... in order to avoid the processing fee associated with a large volume of paper-based records, we will be excluding the 'handwritten notes' from your initial request. Additionally, we will not be performing a partial transfer of the access request to other local authorities, such as Saskatoon Police Services. The search for records will be limited to what is currently in the City's custody or possession.

- [3] On June 30, 2023, the City provided records to the Applicant. Parts of the records were withheld pursuant to subsections 28(1), 16(1)(b), 14(1)(m) and 13(1)(b) of LA FOIP.

- [4] On July 3, 2023, the Applicant contacted the City to further request:

Can you please advise if I need to request a supplemental ATI form for meeting notes that were not included in your original response? The first meeting notes provided were for February 2021. The only other notes provided were for the June and August 2022 meetings. The meeting invitations that you provided indicate that more meetings were held than available meeting notes.

Also, there is a large gap in available documents from February 2021 to June 2022. The Terms of Reference for the Executive Committee indicate that the meetings would be held monthly, which was then changed to every two months, effective October 2022. Am I to understand that no meetings were held between February 2021 and June 2022?

I understand that the search for records was limited to what was in the City's custody or possession, focusing the search on electronic records held by the designated point of contact, [name removed]. I noticed that [name removed], Executive Assistant to the Mayor, and the Mayor himself were included in much of the correspondence. Perhaps they could help fill in the blanks.

- [5] On July 4, 2023, the City responded to the Applicant providing it would search for the meeting notes.

- [6] On July 13, 2023, the Applicant received a response from the City providing:

I went through all the documents released in response to the ATI request and also tried to map out the meeting schedule that happened in the time period requested. If there are no notes provided it is because no notes were taken. Increasingly the meetings have become updates and discussions with no expectation of note-taking or minutes. Although there were set meeting times placed in the calendar, they were only used on

an as-needed basis. It was to ensure if there was a need for an update, there would be time already set aside in the always very booked up calendars of the Chiefs and Mayor.

[7] On July 13, the Applicant responded to the City providing:

Through a prior FOIP request, I am aware of an email from October 7, 2022 with the subject “CSWB Exec Oct 5, 2022 notes” from [name removed]. This was not returned in your documents. Her comment that “If there are no notes provided it is because no notes were taken” is contrary to what I have in my possession. I am concerned that there may be other notes that exist that were not found by the IT search of [name removed] email.

Of the Exec, Mayor [name removed] and Fire Chief [name removed] are the other two members of the CSWB Exec that are within the City of Saskatoon. While they may not have produced documents for the group, they did receive them. As you had indicated, the CSWB Exec records are informal and decentralized. Is it reasonable to request that Mayor [name removed] and Fire Chief [name removed] emails be searched for additional CSWB Exec notes?

[8] On July 13, 2023, the City responded to the Applicant that they would conduct a new comprehensive search and that a partial transfer of the request would be sent to other involved agencies. The City also indicated the specific keyword used to search may not be mentioned in the records they were seeking and that records may exist within notebooks of the Community Safety & Well-being committee members. The City advised the Applicant to submit a supplemental request for which a fee estimate would be issued to the Applicant requesting:

‘any and all emails’ of Fire Chief [name removed] related to ‘CSWB Exec’ or ‘CSWB Partners Group Executive’ for the period January 1, 2020 through present, excluding any calendar invites or cancellations.

[9] As the request that the City is referring to as the supplemental request is considered a separate request, my office will only be assessing the City’s response to the initial request as it was amended on June 5, 2023.

[10] On July 23, 2023, my office received a request for review from the Applicant. Although the City withheld portions of the records under subsections 28(1), 16(1)(b), 14(1)(m) and 13(1)(b) of LA FOIP, the Applicant only requested review of the City’s decision to

withhold parts of the record under subsection 16(1)(b) of LA FOIP and its search for records.

[11] On August 16, 2023, my office sent notice to the City and the Applicant of my office's intent to undertake a review considering whether or not the City made a reasonable effort to search for records responsive to the request as well as whether it properly applied subsection 16(1)(b) of LA FOIP.

II RECORDS AT ISSUE

[12] The records responsive to the access to information request consisted of 104 pages of emails and meeting notifications of which portions were withheld under subsections 28(1), 16(1)(b), 14(1)(m) and 13(1)(b) of LA FOIP. The only record at issue in this review is one email of four pages withheld in part under subsection 16(1)(b) of LA FOIP.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[13] The City qualifies as a "local authority" as defined by subsection 2(1)(f)(i) of LA FOIP. Therefore, I have jurisdiction to undertake this review.

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

[14] 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;

[15] Subsection 16(1)(b) of LA FOIP is a discretionary class-based exemption. It permits refusal of access in situations where release of a record could reasonably be expected to disclose consultations or deliberations involving officers or employees of a local authority.

[16] The provision is intended to allow persons having the responsibility to make decisions to freely discuss the issues before them in order to arrive at well-reasoned decisions. The intent is to allow such persons to address an issue without fear of being wrong, looking bad, or appearing foolish if their frank deliberations were to be made public.

[17] To determine if subsection 16(1)(b) of LA FOIP applies to the record, the following two-part test must be met:

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, at pp. 112-114]

[18] I will now consider each part of the test.

1. Does the record contain consultations or deliberations?

[19] In its submission, the City stated:

The redacted portion of the record under 16(1)(b) pertains to concerns about the accuracy of information presented in a draft financial report. The General Manager notes in the correspondence the information, as presented, does not appear to be correct; therefore, the draft content is under scrutiny, and a senior staff member has suggested that further consultation is necessary to ensure the correctness of the financial information.

The proposed action is to check the financial data prior to release, and the deliberation revolves around whether the financial information is accurate.

[20] “Consultation” means:

- The action of consulting or taking counsel together; deliberation, conference;
- A conference in which the parties consult and deliberate.

[21] 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).

[22] “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;
- the consideration and discussions of the reasons for and against a measure by a number of employees.

(*Guide to LA FOIP*, Ch. 4, p. 113)

[23] The City is appearing to be specifying that the withheld information is both a consultation and a deliberation. Based on a review, the City is discussing and providing input on whether the financial information presented is accurate prior to its decision to share the information further; therefore, the substance of the consultation is apparent within the email. I find that the first part of the test has been met.

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

[24] “Involving” means including. There is nothing in the exemption that limits the exemption to participation only of officers or employees of a local authority. Collaboration with others is consistent with the concept of consultation. 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 113 - 114).

[25] Based on a review of the emails, all individuals involved in the consultations are employees of the City; therefore, I find that the second part of the test has been met and subsection 16(1)(b) of LA FOIP applies to the withheld portions of the record.

3. Did the City conduct a reasonable search for records?

[26] In the Applicant's request for review to my office, they stated that a separate access to information request had been sent to the Saskatoon Police Service (SPS). In the records responsive for that request, they were provided with an email from the Community Safety and Well-being Coordinator to SPS. The Applicant provided a copy of this record to my office which did include the search terms used by the City. This email should have therefore also been within the records responsive to this request received from the City, but was not.

[27] Section 5 of LA FOIP provides:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a local authority.

[28] Section 5 of LA FOIP establishes a right of access by any person to records in the possession or control of a local authority, subject to limited and specific exemptions, which are set out in LA FOIP (*Guide to LA FOIP*, Chapter 3, "Access to Records", Updated: May 5, 2023, [*Guide to LA FOIP*, Ch. 3], p.3).

[29] Subsection 5.1(1) of LA FOIP requires a local authority to respond to an applicant's access to information request openly, accurately and completely. This means that local authorities should make reasonable effort to not only identify and seek out records responsive to an applicant's access to information request, but to explain the steps in the process. The threshold that must be met is one of "reasonableness". In other words, it is not a standard

of perfection, but rather what a fair and rational person would expect to be done or consider acceptable (*Guide to LA FOIP*, Ch. 3, p. 12).

[30] In my office's notice of review, it advised the City that:

The Applicant believes more records exist because an access request to another public body returned an email dated October 5, 2022 with a subject line of "CSWB Exec Oct 5, 2022 Notes"; the Applicant believes that this record should have been found during a search for records responsive to her access request.

[31] Regarding the missing email, in its submission, the City stated:

The City acknowledges that the email was not located within the Community Safety and Well-being Coordinator's mailbox but was found as part of the secondary search which encompassed records of another member of the committee.

[32] Community Safety and Well-Being is a strategic priority for City Council and listed in the City's *2022 – 2025 Strategic Plan* document, its *City Council Strategic Planning & Leadership Initiative Policy C01-029* and in its *2023 Multi-Year Budget* document on its website. Given this as well as the City's argument above for its reason to withhold portions of the record based on the fact it relates to a discussion of a draft financial report, I find it surprising that no formal records or processes are being maintained with regards to matters of the Community Safety & Well-being committee.

[33] In its submission the City stated:

Notes on current email management at the [City]:

- Staff are expected to judge how an email should be treated, pursuant to the records management policies, standards, and procedures applicable to them before deleting one.
- Email users cannot rely on the back-up system in place as an archiving or record retention tool, it is only intended to act as a disaster and system recovery tool for that day's emails.
- Procedures and awareness guidelines exist on what is and isn't transitory records.

- The search for emails created during the relevant period related to the ATI excluded the backup systems as those records are no longer primary records and the City is not required to create records in response to an ATI request.

[34] The threshold for search is what is reasonable in the circumstances. A local authority does not need to prove beyond a reasonable doubt that a record does not exist, but it needs to be able to demonstrate its efforts to search for it and to provide reasonable explanations, such as what the local authority's policy is on records retention.

[35] I note that, not only did the Community Safety and Well-being Coordinator send the email in question, but they also sent themselves a copy. This would mean that the Community Safety and Well-being Coordinator would have had to delete this record twice and that the City did not follow its policies and procedures for records management and retention.

[36] When the record was not found in the initial search, the City offered to do a supplemental request of which there may be a fee; however, if appropriate file management and record retention policies were in place and being followed, there would be no need for a supplemental or second request. Therefore, as I find it did not follow its policies and procedures, I recommend the City provide regular training to its staff on its records management and retention policies to ensure that proper record keeping is occurring.

[37] The City contacted the Applicant by telephone to discuss the scope of the request and the potential for fees with the original request. The Applicant agreed to narrow the scope of the request to just the Community Safety and Well-being Coordinator's email account and the keywords for the search. This was confirmed in an email to the Applicant by the City. To perform this search, the City's email system administrator searched the emails of the Community Safety and Well-being Coordinator using the keywords agreed to by the Applicant. The City then reviewed all records that were returned for their responsiveness to the request. This search would be reasonable given the request was for emails within the email account that was searched. Therefore, I find that the City performed a reasonable search for responsive records.

IV FINDINGS

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

[39] I find that subsection 16(1)(b) of LA FOIP applies to the withheld portions of the record.

[40] I find that the City did not follow its policies and procedures for records management and retention policies.

[41] I find that the City performed a reasonable search for responsive records.

V RECOMMENDATIONS

[42] I recommend the City continue to withhold portions of the record withheld under subsection 16(1)(b) of LA FOIP.

[43] I recommend the City provide regular annual training to its staff on its records management and retention policies.

[44] I recommend the City take no further action regarding its search efforts.

Dated at Regina, in the Province of Saskatchewan, this 27th day of October, 2023.

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