



REVIEW REPORT 196-2021

Moose Jaw Police Service

October 26, 2022

Summary:

The Applicant requested a review of their access to information request with the Moose Jaw Police Service (MJPS) as they were not satisfied with the outcome. The Commissioner found that MJPS properly applied subsection 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to portions of the withheld information, but did not properly apply it to other portions. The Commissioner recommended that MJPS continue to withhold or release information where it applied subsection 28(1) of LA FOIP. The Commissioner also found that MJPS did not meet its duty to assist as it did not respond completely by explaining to the Applicant why it withheld: (1) information as “no substantive” in record 4; and (2) records SCS1 to SCS 62, which appear to be responsive, but no exemptions were applied. The Commissioner recommended that within 30 days of issuance of this Report the MJPS conduct a line-by-line review of these 191 pages, and provide a new section 7 response to the Applicant which should include a copy of the pages or portions that are not exempt from release. He also recommended that it provide clear reasons in its section 7 response to the Applicant as to why it was withholding the severed portions of record 4.

I BACKGROUND

[1] The Applicant made an access to information request to the Moose Jaw Police Service (MJPS) by letter dated May 25, 2021, requesting access to:

... I am requesting all files from the Moose Jaw City Police Service from 1992-1993 investigation by the Moose Jaw City Police Service concerning the death of my [parent]. [Parent] death was [DATE] in Moose Jaw, Saskatchewan

- [2] On July 12, 2021, the Applicant requested a review by my office as they did not receive a response to the request. The Applicant included Canada Post tracking information to indicate their request was delivered to MJPS on May 28, 2021.
- [3] On July 30, 2021, my office emailed MJPS to inquire about the status of the response. On August 3, 2021, the FOIP Co-ordinator advised my office that MJPS received the Applicant's letter on May 28, 2021 and had left voicemails for the Applicant on June 8, 2021 and July 6, 2021, but that the Applicant had not returned those calls.
- [4] On August 5, 2021, my office recommended to MJPS that it send a written letter to the Applicant seeking clarification it required, so that it could proceed and to copy my office on the response.
- [5] On August 6, 2021, MJPS wrote the Applicant. In part, the letter stated:
- ...In regards to your letter of request May 25, 2021 I had tried to contact you by phone and left messages as I was hoping to assist you with our access process. I have included a Form 2 Access to Information Request. Please note that there is a twenty dollar (\$20) application fee that is required to initiate the process
- [6] This letter also advised the Applicant that there may be fees to process the request.
- [7] By email on August 11, 2021, my office emailed the Applicant and advised, in part:
- ... Our office has reached out to the [MJPS] and been advised that the \$20 application fee is outstanding and they require some additional clarification regarding your request. As such, they have issued a letter to you dated August 6, 2021 asking you to contact them and advising of the application fee. I understand you had forwarded your request to the investigating officer, however, all access to information requests are processed by the LA FOIP Coordinator ... and you will need to work with [LA FOIP Co-ordinator] regarding the processing of the request....
- [8] By email on August 24, 2021, the Applicant sent a photograph of the \$20 application fee they sent to the MJPS. This included documentation showing they sent a cheque by Xpresspost.

[9] By letter dated September 13, 2021, MJPS responded to the request, advising it was denying access to a portion of the record pursuant to subsections 23(1), 23.1 and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). In addition, MJPS advised the Applicant it was denying access to some of the records in full but did not claim an exemption to the records. I will look at these records later in this Report.

[10] Once the Applicant had an opportunity to review the released portions of the record, they advised my office that they wanted a review of the exemptions applied to the record and for my office to consider if MJPS met its duty to assist.

[11] On October 13, 2021, my office notified both parties of my office’s intention to undertake a review and invited both parties to provide my office with a submission. My office received a submission from the MJPS on November 15, 2021. My office did not receive a submission from the Applicant.

II RECORDS AT ISSUE

[12] The record at issue totals 207 pages as described in the following table:

Description of Record	Number of Pages	Exemptions claimed
Record 1: General Occurrence Report numbered page 1 to 11	9 pages partially withheld (pages 1 to 9)	28(1) of LA FOIP – cited also subsections 8, 23(1) and 23.1 of LA FOIP
Record 2: Letter dated September 24, 2020	1 page partially withheld	28(1) of LA FOIP – cited also subsections 8, 23(1) and 23.1 of LA FOIP
Record 3: Letter dated December 30, 2020	2 pages withheld in part (pages 1 and 4 of the letter)	28(1) of LA FOIP – cited also subsections 8, 23(1) and 23.1 of LA FOIP
Record 4: Officer Notes	4 pages withheld in part	<ul style="list-style-type: none"> • Pages 2 and 3: 28(1) of LA FOIP – cited also subsections 8, 23(1) and 23.1 of LA FOIP • Pages 1 to 4: Portions marked as “No Substantive”

SCS 1 to SCS 62	191 pages	Not provided to the applicant and no exemption claimed.
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III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[13] MJPS is a “local authority” pursuant to subsection 2(f)(viii.1) of LA FOIP. Therefore, I find I have jurisdiction to undertake this review.

2. Does subsection 28(1) of LA FOIP apply to the record?

[14] MJPS applied subsections 28(1), 23(1) and 23.1 of LA FOIP to portions of information found on pages 1 to 9 in record 1, record 2, pages 1 and 4 in record 3, and pages 2 and 3 in record 4.

[15] Subsection 28(1) of LA FOIP works harmoniously with subsections 23(1) and 23.1 of LA FOIP. Subsection 28(1) of LA FOIP outlines that a local authority shall not disclose personal information in its possession or under its control, while subsection 23(1) of LA FOIP provides the definition of “personal information”. Finally, section 23.1 of LA FOIP outlines that a local authority has a duty to protect personal information. As such, MJPS has cited the three provisions.

[16] Subsections 23(1) and 28(1) of LA FOIP provide:

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

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

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

- (c) information that relates to health care that has been received by the individual or to the health history of the individual;
- (d) any identifying number, symbol or other particular assigned to the individual;
- (e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;
- (f) the personal opinions or views of the individual except where they are about another individual;
- (g) correspondence sent to a local authority by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;
- (h) the views or opinions of another individual with respect to the individual;
- (i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;
- (j) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or
- (k) the name of the individual where:
 - (i) it appears with other personal information that relates to the individual; or
 - (ii) the disclosure of the name itself would reveal personal information about the individual.

...

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 exempt in accordance with this section or section 29.

[17] Subsection 28(1) of LA FOIP requires that a local authority shall not disclose personal information without consent unless a specific circumstance exists. The type of information that is considered personal information is described in subsection 23(1) of LA FOIP; the list is non-exhaustive. To determine if information is personal information, it must: 1) be about an identifiable individual, and 2) be personal in nature.

- [18] The types of information MJPS has withheld on record 1 pages 1 to 9, record 2, record 3 and record 4 includes names, addresses, sex, contact information, driver's license number, occupation, height, weight and eye colour, and the names of individuals connected with other information that is personal in nature. This qualifies as "personal information" pursuant to subsections 23(1)(a), (b), (d), (e), (k)(i) and (ii) of LA FOIP.
- [19] However, there are a few exceptions. In record 1 page 6 item #12 and the second severance in item #13, MJPS has severed a name and a pronoun related to that name. In record 1 page 8, MJPS has severed two names in the last two bullets of the page. These are the names of individuals acting in their professional capacity and not their personal capacity. Therefore, this information is not personal in nature and as such, does not qualify as personal information.
- [20] In my office's [Review Report 337-2021](#), I discussed withholding personal information that would constitute an absurd result at paragraph [17]. I stated, in part, "...withholding personal information from someone who has knowledge of the information or who supplied it would constitute an absurd result."
- [21] The withheld information in record 1 page 5 item #8 to #10 and the top paragraph in record 1 page 6 is the officer's notes regarding conversations they had with the Applicant. Therefore, the Applicant would have knowledge of these conversations as the Applicant was part of it. It would constitute an absurd result to withhold these notes from the Applicant.
- [22] Therefore, I find subsection 28(1) of LA FOIP does not apply to the information withheld in record 1 page 6 item #12 and the second severance in item #13, record 1 page 8 (last two bullets of the page), record 1 page 5 item #8 to #10 and the top paragraph of record 1 page 6, but does apply to the remaining information where it has been applied.
- [23] I recommend MJPS release record 1 page 6 item #12 and the second severance in item #13, record 1 page 8 (last two bullets of the page), record 1 page 5 item #8 to #10 and the top

paragraph of record 1 page 6, and continue to withhold the remainder of the information where subsection 28(1) of LA FOIP has been applied.

3. Did MJPS meet its duty to assist?

[24] By email on October 8, 2021, my office confirmed with the Applicant that they wanted my office to determine if MJPS met its duty to assist in processing and responding to their access to information request.

[25] My office's October 13, 2021 notification email advised MJPS that the Applicant has requested that our office review whether MJPS met its duty to assist pursuant to section 5.1 of LA FOIP. Subsection 5.1(1) of LA FOIP provides:

5.1(1) Subject to this Act and the regulation, a local authority shall respond to a written request for access openly, accurately and completely.

[26] In LA FOIP, the duty to assist requires that a local authority respond to an applicant's written 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 the access to information request, but to explain the steps in the process and seek any necessary clarification on the nature or scope of the request within the legislated timeframe (*Guide to LA FOIP*, Chapter 3, "Access to Records", updated June 29, 2021, [*Guide to LA FOIP*, Ch. 3] at p. 15).

[27] As indicated above, MJPS identified some records (portions of pages 1 to 4 on record 4 and SCS 1 to SCS 62), which were not provided to the Applicant.

[28] In terms of reasons why, MJPS marked portions of information on four pages of record 4 as "no substantive". MJPS clarified with my office that it should have read "non substantive." It advised these pages were from the officer's notebook who was in charge of the Criminal Investigative Unit and, "... the redaction was about an operational issue that had absolutely nothing to do with [Applicant] that is why it was marked."

- [29] I have to determine if these records would be responsive to the Applicant's access to information request. "Responsive" means relevant. The term describes anything that is reasonably related to the request. It follows that any information or records that do not reasonably relate to an applicant's request will be considered "not responsive." Subsection 5.1(1) of FOIP requires government institutions to respond openly, accurately and completely. If a local authority removes information from a responsive record it deems not responsive, it should advise the applicant in its section 7 of FOIP response and explain why (*Guide to LA FOIP*, Ch. 3, p. 12).
- [30] Part of a local authority's duty to assist includes responding completely. Responding completely can include advising of reasons exemptions have been applied, what factors were relied upon in withholding a record and providing the information necessary for an applicant to exercise their rights under LA FOIP (*Guide to LA FOIP*, Ch. 3, p. 17).
- [31] Although I find these portions of record 4 are not responsive to the Applicant's request, MJPS did not clearly address these severances in its September 13, 2021 section 7 response to the Applicant.
- [32] I find MJPS did not meet its duty to assist when it did not respond completely and clearly explain to the Applicant why it withheld information as "no substantive" in record 4.
- [33] In addition, MJPS did not provide the Applicant with 191 pages in records marked SCS 1 to SCS 62. MJPS also did not claim an exemption(s) to SCS 1 to SCS 62 when it responded to the Applicant.
- [34] In its September 13, 2021 response to the Applicant, MJPS addressed these records as follows:

Some of the materials referred to in the 2021 file have been withheld from release in full because they are the records of another local authority or government institution. The Saskatchewan Coroners Service have a greater interest in the records you are requesting and as I provided in my 2018OCT29 email, that is the body you should apply to for access to their records. Had MJPS not opened a new file, which is [sic] have provided, I would have transferred your request to the Saskatchewan Coroners

Service as per clause 11(2)(a) of [LA FOIP] as, "...the record was originally prepared in or for the other local authority or government institution." It also appears that much of the materials would also fall under clause 11(2)(b) of [LA FOIP] as, "...the other local authority or government institution was the first to obtain the record or a copy of the record."

[35] Through a clarification email of November 17, 2021, MJPS advised my office, as follows regarding these 191 pages:

My position on this matter is that the documents that were sent to MJPS are not file documents, they are evidence. Even though they are documents, without being able to authenticate the content, no context can be applied. For investigative purposes, material without context is just stuff and my position would be that this material should have either been exhibited as evidence, or returned to the sender, in this case that would be the Sask. Coroners Service. Finally, as evidence and with consideration to the above comments I would have severed all the materials in their entirety under section 14(1)(c) and 14(1)(k) [of LA FOIP]. I would not be comfortable providing any of these documents (even redacted versions) without confirming their legitimacy.

[36] Further, on November 18, 2021, MJPS added:

My submission is that these are NOT our records, they were received by the Coroners Service, who is the agency that has jurisdiction and the greatest interest as they are responsible for death investigations and have the file. This was not a criminal death, so MJPS purged the files. The Coroners Service forwarded the materials to MJPS, at the most these document [sic] would be exhibits and as such I would not share them as per the sections I have identified. These documents should have been returned to the Coroners Service as MJPS has NO need of them as they came from a private citizen and are not documents that can be authenticated.

[Emphasis added]

[37] LA FOIP provides a right of access to records "in the possession or under the control of a local authority." Section 5 of LA FOIP provides this right of access:

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.

[38] The MJPS has possession of these 191 pages. Furthermore, it has provided my office with a copy of these pages for the review. Therefore, as MJPS has possession of these 191 pages, my office views them as responsive to the request and subject to LA FOIP.

[39] The MJPS has addressed these 191 pages in two ways through the course of this review.

[40] First, it discussed transferring the request to the Saskatchewan Coroner's Service. MJPS had the ability to transfer the request to the Office of the Chief Coroner, who qualifies as a "government institution" pursuant to subsection 2(1)(d)(ii) of *The Freedom of Information and Protection of Privacy Act* and subsection 3(a) and Part I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations*. However, it would have needed to 1) transfer the request within 15 days of receiving it and; 2) determine if the Office of the Chief Coroner had the greater interest in the record pursuant to subsection 11(2)(a) or (b) of LA FOIP. However, this is not relevant to this review as a formal transfer of the request did not occur.

[41] Second, MJPS raised subsections 14(1)(c) and (k) of LA FOIP through the course of the review. However, it did not raise these exemptions in its September 13, 2021 response to the Applicant.

[42] This is of important note because MJPS first withheld the 191 pages in their entirety without claiming any exemptions. It, in part, advised the Applicant the Coroner's Office had a greater interest in the record, but it did not formally transfer the request. Then, through its submission and clarification emails, MJPS raised the above noted exemptions. Finally, after raising the exemptions, it went back to the position that the 191 pages were not the MJPS' records.

[43] MJPS has possession of these records. In order to withhold these records in full or in part, MJPS must claim an exemption to the information being withheld. Therefore, MJPS must conduct a line-by-line review of the 191 pages to determine if exemptions apply.

[44] MJPS did not respond completely as it fully withheld the 191 pages for no reason that is provided for under LA FOIP. Because of this, MJPS did not meet its duty to assist.

[45] I find MJPS did not respond completely about records SCS 1 to SCS 62, which appear to be responsive and were withheld from release. I recommend that within 30 days of issuance

of this Report, the MJPS conduct a line-by-line review of the 191 pages of SCS 1 to SCS 62, and provide a new section 7 of LA FOIP response to the Applicant which should include a copy of the pages or portions that are not exempt from release. I also recommend that in its section 7 response, MJPS provide a clearer reason for withholding the portions severed as “no substantive.”

IV FINDINGS

[46] I find I have jurisdiction to undertake this review.

[47] I find subsection 28(1) of LA FOIP does not apply to the information withheld in record 1 page 6 item #12 and the second severance in item #13, record 1 page 8 (last two bullets of the page), record 1 page 5 item #8 to #10 and the top paragraph of record 1 page 6, but does apply to the remaining information where it has been applied.

[48] I find MJPS did not meet its duty to assist when it did not respond completely and clearly explain to the Applicant why it withheld information as “no substantive” in record 4.

[49] I find MJPS did not respond completely about records SCS1 to SCS 62 which appear to be responsive and were withheld from release.

V RECOMMENDATIONS

[50] I recommend MJPS release record 1 page 6 item #12 and the second severance in item #13, record 1 page 8 (last two bullets of the page), record 1 page 5 item #8 to #10 and the top paragraph of record 1 page 6, and continue to withhold the remainder of the information where subsection 28(1) of LA FOIP has been applied.

[51] I recommend that within 30 days of issuance of this Report, the MJPS conduct a line-by-line review of the 191 pages of SCS 1 to SCS 62, and provide a new section 7 of LA FOIP response to the Applicant which should include a copy of the pages or portions that are not exempt from release.

[52] I recommend that in its section 7 response, MJPS provide a clearer reason for withholding the portions severed as “no substantive.”

Dated at Regina, in the Province of Saskatchewan, this 26th day of October, 2022.

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