



REVIEW REPORT 210-2022

Saskatoon Police Service

March 24, 2023

Summary: The Applicant made an access to information request to the Saskatoon Police Service (SPS). SPS partially denied access pursuant to subsections 14(1)(c) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant was not satisfied with the response and requested a review by the Commissioner. The Commissioner found that SPS properly applied subsections 14(1)(c) and 28(1) of LA FOIP to the record. The Commissioner recommended that SPS continue to withhold the record pursuant to subsections 14(1)(c) and 28(1) of LA FOIP, except where it would be an absurd result to do so.

I BACKGROUND

[1] On November 18, 2021, the Applicant made an access to information request (access request) to the Saskatoon Police Service (SPS). This access request from the Applicant stated:

I am requesting information about a closed file involving myself and my company [name of Corporation]. The investigation was performed by Detective Sgt. [name of Detective Sgt.]. I would like all of the information that can be provided from the file, but most important is information, statements, complaints, etc. from [name of Person 1], [name of Person 2], [name of Person 3] and [name of Person 4]. I believe that the time frame for the materials dates back to May/June of 2020 until we were informed the file was closed on September 8, 2021. I was first contacted in March of 2021.

[2] On December 13, 2021, SPS responded to the Applicant denying access to the records pursuant to subsections 14(1)(c) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] On November 4, 2022, my office received a request for review from the Applicant regarding the exemptions cited by SPS.

[4] On November 8, 2022, my office provided notification to the Applicant and SPS of my office's intention to undertake a review.

[5] On January 25, 2023, SPS provided its submission to my office. The Applicant did not provide a submission to my office.

II RECORDS AT ISSUE

[6] The record at issue includes 222 pages of paper records titled, "General Occurrence Report", which SPS withheld in part pursuant to subsections 14(1)(c) and 28(1) of LA FOIP. There are also four audio and video interviews that SPS withheld in full pursuant to subsections 14(1)(c) and 28(1) of LA FOIP.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[7] 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?

[8] Upon review of the record, my office noted the records contained items as follows:

- a. **Paper records** - written statements, evidence and supporting documents provided to SPS by complainants and witnesses; and investigation steps and notes from officers involved in this investigation; and
- b. **Audio and video records** - interview with one complainant/witness (one file); and interviews with the Applicant and their lawyer (three files).

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

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.

[10] 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"?*

[11] 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).

[12] In its submission to my office, SPS explained that:

...among the police powers of investigation, section 36(2) of *The Police Act, 1990*, provide SPS with the authority to conduct lawful investigations and enforce respective laws... SPS undertook an investigation into potential contraventions of the *Criminal Code*, mainly fraud (s. 380(1) CC). Therefore, SPS submits that the first part of the test has been met.

[13] I note that in my previous reports, such as [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. Following the same approach, I find that there was a lawful investigation. Therefore, the first part of the test for subsection 14(1)(c) of LA FOIP is met for both paper and audio/video records.

2. Does one of the following exist?

...

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

[14] From its submission, SPS appears to be arguing that release “could disclose information with respect to a lawful investigation”. SPS stated as follows:

...Disclosure of the information withheld pursuant to subsection 14(1)(c) of LA FOIP would disclose the fruits of the investigation, witness statements, as well as evidence provided to police in confidence that informed the investigation and the SPS’ decision not to lay charges at the time the complaint was received...

[15] Section 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. There would still have to be a basis for asserting the harm could occur. If it is fanciful or exceedingly remote, the exemption should not be invoked (*Guide to LA FOIP*, Ch. 4, p. 52).

[16] 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).

[17] “With respect to” are words 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).

[18] In its submission to my office, SPS stated that subsection 14(1)(c) of LA FOIP was used to withhold information as follows:

Record	Pages
General Occurrence Report (paper records)	3, 4, 5-11, 13, 15, 16, 18, 20, 23-221 (exemption partially applied)
Video/Audio Files	Interview 1 (00:00-1:43:05), Interview 2.1 Audio (00:00-02:14:20), Interview 2.2 (00:00-1:33:04), Interview 2.3 (00:00-41:09) (exemption applied in full)

[19] SPS further explained that it had not laid any charges related to the matter so far, as the land deal was not complete. However, should the land deal fall through in the future, due to the nature of the investigation (fraud), the investigation could be reopened at a future date under the *Criminal Code*. As the potential charge is an indictable offence that does not carry a statute of limitations, it is important that SPS’ investigation remains confidential. On March 9, 2023, SPS confirmed with my office that this is still the case.

[20] In my office’s [Review Report 202-2018](#), at paragraph [15], I stated:

...the SPS indicated in their submission that their **investigation file was closed sometime in 2013**, but the file was referred to another investigative body for further investigation. Given that the records at issue would disclose information with respect to a lawful investigation, I find that this part of the test is also met.

[Emphasis added]

[21] 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 Sup 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]

- [22] As outlined in the examples above, for subsection 14(1)(c) of LA FOIP to be applicable, an investigation can be concluded, active and ongoing, or be occurring in the future.
- [23] In this case, SPS has closed the file at this time and stated there is potential for future charges. As such, I note that release of the record could disclose information with respect to a lawful investigation.
- [24] Upon review of the paper records, it appears that disclosure of the portions to which SPS applied subsection 14(1)(c) of LA FOIP could disclose information with respect to SPS' investigation. This includes details such as complainant/witness statements. As the second part of the test is met, I find that SPS properly applied subsection 14(1)(c) of LA FOIP to the paper records as described at paragraph [18] of this Report. I recommend SPS continue to withhold this information pursuant to subsection 14(1)(c) of LA FOIP.
- [25] Regarding the audio and video interviews, details of each interview are listed below:
- a. Interview 1 was an audio and video recording of SPS' interview with a witness/complainant in this investigation;
 - b. Interview 2.1 was only an audio recording of SPS' interview with the Applicant and their lawyer, i.e., audio replica of interviews 2.2 and 2.3 listed below;
 - c. Interview 2.2 was an audio and video recording of SPS' interview with the Applicant and their lawyer; and
 - d. Interview 2.3 was an audio and video recording of SPS' interview with the Applicant and their lawyer.
- [26] Interview 1 was an interview between the SPS' officer and a complainant/witness. Interview 1 could release information regarding a lawful investigation; therefore, I find that the second part of the test for subsection 14(1)(c) of LA FOIP is met. As such, I recommend SPS continue to withhold interview 1 pursuant to subsection 14(1)(c) of LA FOIP.

[27] Regarding interviews 2.1, 2.2. and 2.3, even if release of which could disclose information with respect to a lawful investigation, 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. These interviews by SPS are of the Applicant and their lawyer. In these interviews, the SPS’ officer poses questions to the Applicant, and the Applicant and their lawyer provide responses, including detailed information regarding other individuals. Withholding such interviews would lead to absurd result in that the Applicant was present and knew or provided the information. As such, I find it would be an absurd result to withhold interviews 2.1, 2.2 and 2.3 from the Applicant and recommend SPS give access to these three video recordings to the Applicant, in accordance with subsection 10(3) of LA FOIP within 30 days of issuance of this Report.

3. Did SPS properly apply subsection 28(1) of LA FOIP?

[28] I note that SPS applied subsection 28(1) of LA FOIP to some of the places where I have found it properly applied subsection 14(1)(c) of LA FOIP. As such, I will only review the portions of the records where SPS applied subsection 28(1) of LA FOIP on its own, which is pages 1 and 2.

[29] 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.

[30] Section 28 of LA FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains, consents to its disclosure or if the disclosure without consent is authorized by one of the enumerated subsections of 28(2) or section 29 of LA FOIP (Guide to LA FOIP, Chapter 6, “Protection of Privacy”, updated February 27, 2023 [*Guide to LA FOIP*, Ch. 6], p. 163).

[31] Section 28 of LA FOIP only applies to personal information as defined by section 23 of LA FOIP (*Guide to LA FOIP*, Ch. 6, p. 163).

[32] Upon review of pages 1 and 2, I note these pages contain the names, addresses and telephone numbers of the complainants/witnesses. This is their personal information as defined by subsections 23(1)(e) and 23(1)(k)(i) of LA FOIP, which provide as follows:

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

...

(e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

[33] As such, I find that SPS properly applied subsection 28(1) of LA FOIP to the portions of pages 1 and 2 and recommend it continue to withhold these portions pursuant to subsection 28(1) of LA FOIP.

IV FINDINGS

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

[35] I find that SPS properly applied subsection 14(1)(c) of LA FOIP to all of the paper records and to part of the audio/video records.

[36] I find that SPS did not properly apply subsection 14(1)(c) of LA FOIP to the part of the audio/video records where the Applicant was interviewed.

[37] I find that SPS properly applied subsection 28(1) of LA FOIP as it applied it on pages 1 and 2 of the record.

V RECOMMENDATIONS

[38] I recommend that SPS continue to withhold information in the paper record where it applied subsection 14(1)(c) of LA FOIP and give access to the parts of the audio/video recordings to the Applicant, as explained in paragraph [27] of this Report within 30 days of issuance of this Report.

[39] I recommend that SPS continue to withhold the portions of pages 1 and 2 of the record where it applied subsection 28(1) of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 24th day of March, 2023.

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