



REVIEW REPORT 215-2020

Saskatoon Police Service

April 8, 2022

Summary:

The Applicant submitted an access to information request to the Saskatoon Police Service (SPS). SPS provided the Applicant with access to some records but withheld others, citing sections 14(1)(c) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant appealed to the Commissioner. The Commissioner found that section 14(1)(c) of LA FOIP applies to the records to which SPS applied the exemption. While the Commissioner found that SPS properly applied section 28(1) of LA FOIP to some records, he found that it was absurd to apply section 28(1) of LA FOIP to information that the Applicant had either supplied or where the Applicant was present when the information was provided to the SPS. He made a number of recommendations, including that SPS continue to withhold the portions of records to which SPS applied section 14(1)(c) of LA FOIP, but to release other portions of records where it was an absurd result to withhold information from the Applicant.

I BACKGROUND

[1] On June 8, 2020, the Saskatoon Police Service (SPS) received the following access to information request:

My name on file is [name of Applicant].

My file number is [file number].

I am looking for my file from 2009 regarding a complaint against [name of Applicant's ex-spouse] and [name of SPS police officer]. The incident report regarding [name of Applicant's ex-spouse] was mid February as well the complaint about [name of SPS police officer] occurred mid February and reported to Internal Investigations roughly in May 2009.

I would like a copy of my statement that I provided to Internal Investigations back in 2009 in regards to [name of SPS police officer]. I would like the outcome of the investigation, including the emails I submitted, and any correspondence between me and the officers involved in the investigation between myself and [name of SPS police officer].

[2] In a letter dated July 7, 2020, SPS wrote a letter to the Applicant indicating that it would be extending the 30-day response set out in section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) by an additional 30 days pursuant to section 12(1)(a)(i) of LA FOIP.

[3] Then, in a letter dated July 24, 2020, SPS responded to the Applicant's access to information request. SPS provided the Applicant with access to some responsive records but withheld others. SPS cited sections 14(1)(c) and 28(1) of LA FOIP as its reasons for withholding records, in part or in full.

[4] On August 24, 2020, the Applicant contacted my office to request a review.

[5] On September 2, 2020, my office notified the Applicant and SPS that my office would be undertaking a review.

[6] Then, over a year later, in a letter dated October 1, 2021 to the Complainant, SPS indicated it located additional records that were responsive to the Applicant's access request. It withheld portions of the records pursuant to sections 14(1)(c) and 28(1) of LA FOIP and then enclosed the remaining records with the letter.

II RECORDS AT ISSUE

[7] As described in the background, SPS responded to the Applicant in a letter dated July 24, 2020. Then, in a letter dated October 1, 2021, SPS provided a second response to the Applicant.

Record #	Record Description	LA exemption(s) applied by SPS	FOIP Status
1	Emails – 13 pages	28(1)	Released in part
2	Emails – 25 pages	28(1)	Released in part
3	Emails – 40 pages	28(1)	Released in part
4	Emails – 24 pages	28(1)	Released in part
5	Emails – 30 pages	28(1)	Released in part
6	Emails – 16 pages	28(1)	Released in part
7	Emails – 6 pages	28(1)	Released in part
8	Emails – 19 pages	28(1)	Released in part
9	Emails – 3 pages	28(1)	Released in part
10	Emails – 19 pages	28(1)	Released in part
11	Email – 1 page	28(1)	Released in part
12	Email – 1 page	28(1)	Released in full
13	Email – 1 page	28(1)	Released in part
14	Emails with handwriting – 87 pages	28(1)	Released in part
15	Notice – Remedial Order - 1 page	28(1)	Withheld in full
16	Notes of Insp. Haye – 1 page		Released in full
17	General Occurrent Report – GO 2009-13522 – 42 pages	14(1)(c), 28(1)	Released in part
18	Audio Recording #1 (Parts 1.1 and 1.2) – 67 minutes and 33 seconds	14(1)(c)	Withheld in full
19	Audio Recording #2 – 4 minutes and 48 seconds	14(1)(c)	Withheld in full
20	Audio Recording #3 – 16 minutes and 38 seconds	14(1)(c)	Withheld in full
21	Audio Recording #4 – 7 minutes and 33 seconds		Released in full
22	Audio Recording #5 – 9 minutes and 9 seconds	28(1)	Released in part
23	Audio Recording #6 – 21 minutes and 28 seconds	14(1)(c), 28(1)	Released in part
24	Audio Recording #7 – 3 minutes and 39 seconds	28(1)	Released in part
25	Audio Recording #8 – 19 minutes and 34 seconds	28(1)	Released in part
26	Audio Recording #9 (Parts 9.1, 9.2 and 9.3) – 67 minutes and 14 seconds	14(1)(c)	Withheld in full
27	Transcript of Audio Recording #1 – 65 pages	14(1)(c)	Withheld in full
28	Transcript of Audio Recording #2 – 3 pages	14(1)(c)	Withheld in full

29	Transcript of Audio Recording #3 16 pages	14(1)(c)	Withheld in full
30	Transcript of Audio Recording #5 – 7 pages	28(1)	Released in part
31	Transcript of Audio Recording #6 – 15 pages	14(1)(c), 28(1)	Released in part
32	Transcript of Audio Recording #7 – 3 pages	28(1)	Released in part
33	Transcript of Audio Recording #8 – 11 pages	28(1)	Released in part
34	Transcript of Audio Recording #9 – 68 pages	14(1)(c)	Withheld in full
35	Officer 1 Notes – 71 pages	14(1)(c), 28(1)	Released in part
36	Officer 2 Notes – 42 pages	14(1)(c), 28(1)	Released in part

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[8] The SPS is a “local authority” as defined by section 2(f)(viii.1) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

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

[9] SPS applied section 14(1)(c) of LA FOIP to records 17 to 20, 23, 26 to 29, 31, and 34 to 36. Section 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] Section 14(1)(c) of LA FOIP is a discretionary class-based and harm-based exemption. This means that 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 (*Guide to LA FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 29, 2021 [Guide to LA FOIP, Ch. 4], p. 52).

[11] My office uses the following two-part test to determine if section 14(1)(c) of LA FOIP applies:

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

(Guide to LA FOIP, Ch. 4, pp. 52 to 53)

[12] Below is my analysis to determine if each part of the test is met.

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

[13] A "lawful investigation" is an investigation that is authorized or required and permitted by law. To meet this part of the test, the local authority should identify the legislation under which the investigation occurred (Guide to LA FOIP, Ch. 4, p. 52).

a. Record 17

[14] For record 17, SPS explained that SPS's activity was a lawful investigation into an offence contrary to section 266 of the *Criminal Code*. SPS noted that, among police powers of investigation, section 36(2) of *The Police Act, 1990* authorized its investigation.

[15] Based on a review of the redacted portions of record 17, I note that they are indeed related to a lawful investigation into an offence by the SPS.

[16] As such, I find that the first part of the two-part test for section 14(1)(c) of LA FOIP is met for record 17.

b. Records 18 to 20, 23, 26 to 29, 31, and 34 to 36

- [17] For records 18 to 20, 23, 26 to 29, 31, and 34 to 36, SPS noted that, among police powers of investigation, section 54(1) of *The Police Act, 1990* authorized its investigation.
- [18] Based on a review of redacted portions of records 18 to 20, 23, 26 to 29, 31, and 34 to 36, I note they are indeed related to a lawful investigation into an offence by the SPS.
- [19] As such, I find that the first part of the two-part test for section 14(1)(c) of LA FOIP is met for records 18 to 20, 23, 26 to 29, 31, and 34 to 36.

2. Does one of the following exist?

a. Could the release of the information interfere with a lawful investigation?

OR

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

- [20] In its submission, the SPS asserted that the disclosure of the records to which it applied section 14(1)(c) of LA FOIP would disclose information with respect to a lawful investigation. When a local authority such as the SPS makes such an assertion, 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).
- [21] “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).
- [22] Further, section 14 of LA FOIP uses the word “could” instead “could reasonable be expected to” as 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 outcome could occur. If it is fanciful or exceedingly remote, the exemption should not be invoked (Guide to LA FOIP, Ch. 4, p. 53).

[23] Based on a review of records 17 to 20, 23, 26 to 29, 31, and 34 to 36, I find that the release of the redacted portions of the record would disclose information with respect to the lawful investigations undertaken by SPS. I find that the second part of the two-part test is met for section 14(1)(c) of LA FOIP.

[24] I find that section 14(1)(c) of LA FOIP applies to records 17 to 20, 23, 26 to 29, 31, and 34 to 36. I recommend that SPS continue to withhold the portions of records 17 to 20, 23, 26 to 29, 31, and 34 to 36 to which it applied section 14(1)(c) of LA FOIP.

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

[25] SPS applied section 28(1) to portions of records 1 to 15, 17, 22 to 25, 30 to 33, and 35 to 36.

[26] Section 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.

[27] Section 23(1) of LA FOIP defines “personal information” as follows:

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;

...

(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

(ii) the disclosure of the name itself would reveal personal information about the individual.

[28] It should be noted that the list of examples of personal information in section 23(1) is non-exhaustive. In order for information to qualify as personal information, it must: 1) be about an identifiable individual, and 2) be personal in nature.

a. Record 17 (General Occurrence Report)

[29] SPS redacted portions of record 17 pursuant to section 28(1) of LA FOIP. Record 17 is a general occurrence report. Based on a review of the redactions, I find that they contain personal information of third party individuals, such as names, sex, dates of birth, addresses, and telephone numbers, as defined by section 23(1)(a), (b), (e), and (k) of LA FOIP. As such, I recommend that SPS continue to withhold the information to which it applied section 28(1) of LA FOIP to record 17.

b. Records 1 to 14 (emails and attachments), 22 to 25 (audio recordings), 30 to 33 (transcripts of audio recordings)

[30] Records 1 to 14 are copies of emails submitted by the Applicant to the SPS as evidence for one of SPS' investigations (where the Applicant was a sender or receiver of emails). Further, records 22 to 25 are audio recordings of statements made by the Applicant to two SPS members in the course of one of SPS' investigations. Records 30 to 33 are transcripts of the audio recordings.

[31] In its submission, the SPS noted that the majority of the responsive information was provided directly by the Applicant. For example, records 1 to 14 are copies of emails (and attachments) submitted by the Applicant to the SPS. While most of the emails were

provided to the Applicant, SPS redacted personal information of third parties such as email addresses, pursuant to section 28(1) of LA FOIP. Similarly, SPS redacted the personal information of third parties from the audio recordings. SPS noted that even though the Applicant provided the information to SPS, the passage of time may have eroded memory of the content of the records. SPS said it was for that reason it redacted the personal information of third parties from these records.

[32] In the past, I have said it is an absurd result to withhold information from an applicant who supplied the information or who already has knowledge of the information that the applicant supplied ([Review Report 171-2019](#) at paragraph [52]; [Review Report 059-2017](#) at paragraph [40]).

[33] In [Reconsideration Order MO-1868-R](#), the Office of the Ontario Information and Privacy Commissioner (ON IPC) explained how an applicant who makes an access to information request should gain access to the information they've supplied, even if the information contains the personal information of other individuals:

Several subsequent orders have supported this position and include similar findings. The absurd result principle has been applied where, for example:

- **the requester sought access to his or her own witness statement (Orders M-444, M-451, M-613)**
- **the requester was present when the information was provided to the institution (Orders P-1414)**
- **the information is clearly within the requester's knowledge (Orders MO-1196, PO-1679, MO-1755)**

In Order MO-1323, Adjudicator Laurel Copley elaborated on the rationale for the application of the absurd result principle as follows:

As noted above, one of the primary purposes of the Act is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure (section 1(b)). Section 1(b) also establishes a competing purpose which is to protect the privacy of individuals with respect to personal information about themselves. Section 38(b) was introduced into the Act in recognition of these competing interests.

In most cases, the “absurd result” has been applied in circumstances where the institution has claimed the application of the personal privacy exemption in section 38(b) (or section 49(b) of the provincial Act). The reasoning in Order M-444 has also been applied, however, in circumstances where other exemptions (for example, section 9(1) (d) of the Act and section 14(2)(a) of the provincial Act) have been claimed for records which contain the appellant’s personal information (Orders PO-1708 and MO-1288).

In my view, it is the “higher” right of an individual to obtain his or her own personal information that underlies the reasoning in Order M-444 which related to information actually supplied by the requester. **Subsequent orders have expanded on the circumstances in which an absurdity may be found, for example, in a case where a requester was present while a statement was given by another individual to the Police (Order P-1414) or where information on a record would clearly be known to the individual, such as where the requester already had a copy of the record (Order PO-1679) or where the requester was an intended recipient of the record (PO-1708).**

To date, this office has not applied the absurd result principle to a situation where an individual has consented to disclose his or her witness statement which may contain personal information of individuals other than the witness and the requester. Having carefully considered the various interests at play in this type of situation, I have concluded that the principle should be extended to this type of situation.

Order M-444 and other subsequent similar orders have made it clear that if an individual makes a formal request for access under the Act to his or her statement made as a witness to a police investigation, that statement will be provided to the requester, regardless of the fact that it contains personal information of other individuals. These orders are saying, in effect, that denying a requester access to information that originated with that same person cannot be justified on the basis that some parts of the statement may relate to other individuals as well. This office has applied the absurd result principle to that set of circumstances, and institutions routinely disclose statements of this nature in response to requests under both the provincial and municipal statutes. This practice reflects a clear balancing of interests in favour of disclosing information that might otherwise be caught by a presumption in section 14(3) (b), on the basis of what Adjudicator Cropley described as a “higher” right of access to one’s own personal information.

[Emphasis added]

- [34] Since the Applicant was the individual who supplied records 1 to 14 to the SPS, it would be an absurd result to withhold portions of these records from the Applicant even if they contain third party personal information. Similarly, since the Applicant provided statements recorded in the audio recordings and the transcripts of the audio recordings, it

would be an absurd result to withhold portions of records 22 to 25 and 30 to 33 from the Applicant.

[35] I find that it is an absurd result to withhold portions of records 1 to 14, 22 to 25, and 30 to 33 pursuant to section 28(1) of LA FOIP. I recommend that SPS release records 1 to 14, 22 to 25 and 30 to 33 in their entirety to the Applicant.

c. Records 35 and 36 (Officers' notes)

[36] Record 35 (71 pages) are handwritten notes by a police officer. Record 36 (42 pages) are handwritten notes by another police officer. SPS provided their notes in one portable document format (PDF) file, totaling 113 pages. For the redacted portions in the PDF file, SPS cited either 1) both sections 14(1)(c) and 28(1) of LA FOIP or 2) only section 28(1) of LA FOIP as its reason for withholding information within the PDF file. Earlier, I found that SPS properly applied section 14(1)(c) of LA FOIP to records 35 and 36. Therefore, in this section of this Review Report, I am considering only the portions of records 35 and 36 to which SPS applied only section 28(1) of LA FOIP.

[37] Based on a review of the redacted portions of the PDF file to which SPS applied only section 28(1) of LA FOIP, I note that redactions on pages 6, 7, 13, 21, 22, 23, 28, 36, 37, 53, 96, and 97 is information supplied by the Applicant to the SPS or the Applicant was present when the information was provided to the SPS. Therefore, I find that withholding redacted portions on pages 6, 7, 13, 21, 22, 23, 28, 36, 37, 53, 96, and 97 from the Applicant pursuant to section 28(1) of LA FOIP would be an absurd result. I recommend that SPS review the redacted portions on pages 6, 7, 13, 21, 22, 23, 28, 36, 37, 53, 96, and 97 and release the information that was supplied by the Applicant or where the Applicant was present when the information was provided to the SPS.

d. Record 15 (Notice of Remedial Action)

[38] SPS applied section 28(1) to record 15 in its entirety. Record 15 is a Notice of Remedial Action that details disciplinary information.

- [39] In the past, my office has said that disciplinary information would be “employment history”, which is personal information pursuant to section 23(1)(b) of LA FOIP ([Investigation Report LA-2012-002](#) at paragraph [23]). Therefore, such information is generally withheld from disclosure pursuant to section 28(1) of LA FOIP by local authorities. However, I note that section 28(2)(n) of LA FOIP allows for the head of a local authority to disclose personal information for any purpose where, in the opinion of the head, the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure.
- [40] Based on a review of record 15, I find that the information is “employment history” pursuant to section 23(1)(b) of LA FOIP. Therefore, I must determine if SPS properly applied section 28(1) to record 15 or if there is any basis for disclosing the personal information pursuant to section 28(2)(n) of LA FOIP.
- [41] In its submission, SPS cited the Court of Queen’s Bench of Alberta’s (AB QB) [Calgary Police Service v. Alberta \(Information and Privacy Commissioner\), 2010 ABQB82](#) (CPS decision) to support its position to withhold record 15 from disclosure in its entirety pursuant to section 28(1) of LA FOIP. At paragraph [101] of the CPS decision, McMahon, J. recognized two categories of police disciplinary decisions. The first category is complaints referred by the Chief to the Minister of Justice and Attorney General because they may constitute a federal or a provincial offence. McMahon, J. asserted if there is a decision to charge resulting from such a referral, the disclosure of some personal information of the police officer pursuant to section 17(5)(a) of Alberta’s *Freedom of Information and Protection of Privacy Act* (AB FOIP) is warranted since the transparency of the justice system prevails. Disciplinary decisions that result from the charges must be made public so the public can make its own judgement as to the appropriateness of the employment sanctions. The second category is complaints which may constitute contraventions of regulations governing discipline or the performance of duty. McMahon, J. describes these complaints as primarily employment issues for which the Alberta legislature has provided a detailed process for resolution, while balancing the public interest in the well-manage police service with the private and public interest in protecting

against unreasonable loss of privacy merely for wearing the police uniform. In other words, the disclosure of personal information about the disciplinary decision would qualify as an unreasonable invasion of privacy pursuant to section 17(4) of AB FOIP.

[42] After reviewing record 15 and considering the CPS decision, I am of the view that record 15 falls into the second category described by McMahon, J. as it is a disciplinary decision issued pursuant to *The Municipal Police Discipline Regulations, 1991*. As such, I find that SPS properly applied section 28(1) of LA FOIP to record 15. I recommend that SPS continue to withhold record 15 pursuant to section 28(1) of LA FOIP.

4. Did SPS undertake a reasonable search for records?

[43] During the intake stage of my office's review process, the Applicant explained she believed that she was not provided with all the records responsive to her request. In an email to my office dated August 17, 2020, the Applicant explained she was looking for emails dated prior to February 25, 2009. She had been a sender and receiver of emails with a SPS police officer in a personal capacity. This SPS police officer exchanged emails with the Applicant from his personal email account. Then, she had submitted a complaint to SPS regarding that particular SPS police officer's conduct. As part of SPS' investigation into the Applicant's complaint, the Applicant had provided copies of the emails she exchanged with the SPS police officer to the SPS. She provided my office with a copy of an email dated February 25, 2009. The body of the February 25, 2009 email said, "sorry it took me this long to e-mail you back...". The Applicant relies on this particular line in the email as her reason for believing why emails dated prior to February 25, 2009 should exist.

[44] When an applicant believes that they have not received all records responsive to their access request, they may request that my office review the search efforts undertaken by the local authority.

[45] Section 5 of LA FOIP provides an applicant with a right of access to records in the possession or control of a local authority. It states:

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**.

[Emphasis added]

[46] Section 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 efforts 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 (*Guide to LA FOIP*, Chapter 3: "Access to Records", updated: June 29, 2021, at p. 7 (*Guide to LA FOIP*, Ch. 3)).

[47] The threshold to 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. A "reasonable search" is one in which an employee, experienced in the subject matter of the records, expends a reasonable effort to locate records which are reasonably related to the access request. A reasonable effort is the level of effort you would expect of any fair, sensible person search areas where records are likely to be stored. What is reasonable depends on the request and related circumstances (*Guide to LA FOIP*, Ch 3. P. 7).

[48] When an applicant requests a review of the local authority's search efforts, the local authority should provide my office with detailed information about its efforts to conduct a search. The following examples of the type of information that can be provided to my office are relevant here:

- For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search.

- Describe how records are classified within the records management system. For example, are the records classified by:
 - alphabet
 - year
 - function
 - subject
- Consider providing a copy of your organization's record schedule and screen shots of the electronic directory (folders & subfolders).
- Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
- Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicate what key terms were used to search if applicable.
- Indicate the calendar dates each employee searched.
- Indicate how long the search took for each employee.
- Indicate what the results were for each employee's search.
- Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see my office's resource, *Using Affidavits in a Review with the IPC*, available on my office's website.

(*Guide to LA FOIP*, Ch. 3, pp. 9-10)

[49] In its submission, SPS described its efforts to search for responsive records as follows:

- On June 9, 2020, the Access and Privacy Unit at SPS contacted a Staff Sergeant in charge of the Professional Standards Division (PSD) to request records responsive to the Applicant's access request. On June 11, 2020, PSD provided the Access and Privacy Unit 13 PDF files, one screenshot, and 6 Microsoft Word documents.
- The Access and Privacy Unit retrieved a single "bankers box" that contained cassette tapes of audio recordings, the transcripts of the audio recordings, and the original hardcopy of emails provided by the Applicant to investigators. These original hardcopy of emails contained the Applicant's handwriting on them (listed as record 14 in the "Records at Issue" in Section II of this Review Report).

- Since the investigations took place in 2009, three of the four members who investigated the Applicant's complaint had retired. SPS explained that when a sworn member retires, their notebooks are stored in the Exhibits Unit. On June 29, 2020, the Access and Privacy Officer attended the Exhibits Unit to retrieve the notebooks of the retired members. SPS pulled the notebooks for the retired members' notebooks but did not locate responsive records at the time.
- As noted in the background of this Review Report, SPS had located additional records over a year after it first responded to the Applicant. In its initial search through notebooks, SPS had not located responsive records within the retired members' notebooks. However, in the course of processing another access request, SPS located the notes of two retired SPS members. SPS provided a copy of the handwritten records (listed as records 35 and 36 is the "Records At Issue" in section II of this Review Report).
- In terms of the investigator who is still active with the SPS, he completed a search of his paper and electronic records. He located a record from his notebook, which was released to the Applicant in full.
- Since the Applicant's focus was on searching for emails dated prior to February 25, 2009, SPS requested that its Information Technology (IT) Division complete a search of the retired members' email accounts. IT completed a search but no results were returned as the email were now inactive.

[50] Based on the above, I find that the SPS made reasonable efforts to search for both paper and electronic records. I recommend that SPS take no further action with respect to its search efforts.

[51] I note the Applicant's reason for believing why additional records exist. However, the SPS is only responsible for making reasonable efforts to search for records in its possession or control pursuant to section 5 of LA FOIP. The SPS came into possession of emails because the Applicant had supplied the SPS copies of the emails. Therefore, there is a possibility that the Applicant had not supplied a copy of emails that preceded the February 25, 2009 email to SPS and that is why SPS did not locate such records in its search for records.

IV FINDINGS

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

- [53] I find that section 14(1)(c) of LA FOIP applies to records 17 to 20, 23, 26 to 29, 31, and 34 to 36.
- [54] I find that the redacted portions of record 17 contain personal information of third party individuals as defined by section 23(1)(a), (b), (e), and (k) of LA FOIP.
- [55] I find that it is an absurd result to withhold portions of records 1 to 14, 22 to 25, and 30 to 33 pursuant to section 28(1) of LA FOIP.
- [56] I find that withholding redacted portions on pages 6, 7, 13, 21, 22, 23, 28, 36, 37, 53, 96, and 97 from the Applicant pursuant to section 28(1) of LA FOIP would be an absurd result.
- [57] I find that SPS properly applied section 28(1) of LA FOIP to record 15.
- [58] I find that the SPS made reasonable efforts to search for both paper and electronic records.

V RECOMMENDATIONS

- [59] I recommend that SPS continue to withhold the portions of records 17 to 20, 23, 26 to 29, 31, and 34 to 36 to which it applied section 14(1)(c) of LA FOIP.
- [60] I recommend that SPS continue to withhold the redacted portions of record 17 to which SPS applied section 28(1) of LA FOIP.
- [61] I recommend that SPS release records 1 to 14, 22 to 25 and 30 to 33 in their entirety to the Applicant.
- [62] I recommend that SPS review the redacted portions on pages 6, 7, 13, 21, 22, 23, 28, 36, 37, 53, 96, and 97 and release the information that was supplied by the Applicant or where the Applicant was present when the information was provided to the SPS.

[63] I recommend that SPS continue to withhold record 15 pursuant to section 28(1) of LA FOIP.

[64] I recommend that SPS take no further action with respect to its search efforts.

Dated at Regina, in the Province of Saskatchewan, this 8th day of April, 2022.

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