Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 224-2021

City of Regina

December 6, 2022

Summary: The Applicant submitted an access to information request to the City of Regina (City) requesting communications between the City and three third parties. The City withheld information in part from the records pursuant to subsections 16(1)(a), 18(1)(a), (b), (c), and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant requested a review of the City's decision. The Applicant also requested a review of the City's legislated response timelines. The Commissioner found the City complied with section 12 of LA FOIP. The Commissioner also found that the City did not properly apply subsections 16(1)(a), 18(1)(a), (b) and (c) of LA FOIP to the records. The Commissioner also found the City did not properly apply subsection 28(1) of LA FOIP in some parts, but that it did to others. The Commissioner recommended that the City release or continue to withhold information accordingly.

I BACKGROUND

[1] On July 7, 2021, the City of Regina (City) received the following access to information requests from the Applicant:

> From January 1, 2020 to July 7, 2021
> All external communications, received (email, letter, fax, text, phone notes) including attachments (reports, analysis or other submissions) and any outgoing correspondence (from City Administration identified to be [employee names], or any other City employee under the organizational reporting structure to [employee names] along with all City Councillors) and attachments regarding applications [file number] Official Community Plan Amendment and [file number] Proposed Concept Plan Harbour Landing West.
>
> I do not require external communications for this access to information request from the following external parties: Forester Harvard Development Corp., Harvard

> Development Inc., The Regina Public School Board, The Regina Catholic School Board, the Province of Saskatchewan including and the ministry of Education.

[2] On July 29, 2021, the City sent to the Applicant a letter indicating that it had extended the 30-day response period by an additional 30 days pursuant to subsection 12(1)(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] On September 2, 2021, the City issued a section 7 decision withholding information partially pursuant to subsections 16(1)(a), (b), 18(1)(a), (b), (c), and 28(1) of LA FOIP.

[4] On September 13, 2021, the Applicant submitted a request for review to my office regarding the City's exemptions as well as its decision to extend the timeline pursuant to subsection 12(1)(c) of LA FOIP.

[5] On September 24, 2021, my office sent notifications to the Applicant, the City and the third parties of my office's intention to undertake a review.

[6] On October 14, 2021, Long Lake Investment Inc. (LLI) sent the following email message to my office regarding the review.

> The information sought in this request has now been presented publicly by me to Regina City Council and Planning Commission therefore we no longer have any concerns with its release...it is public. Our interests are no longer prejudiced...

[7] In the course of preparing its submission to my office, the City advised it meant to cite subsection 18(1)(c) of LA FOIP to page 7 of Record D instead of subsection 16(1)(a) of LA FOIP.

[8] On November 16, 2022, the City forwarded 10 additional records to the Applicant. Since the City removed its redactions from these records, I will not refer to them or include them in this review.

II RECORDS AT ISSUE

[9] The records at issue are as follows:

Record Grouping	General Description	Number of Pages	LA FOIP Exemptions Applied
C	Email dated February 17, 2021 between third party and City of Regina employees.	Pages 4 and 6	18(1)(a), (b), (c) to page 6 28(1) to page 4
D	Email dated March 24, 2021 between City employees.	Page 7	16(1)(a) to page 7
F	Submission and correspondence from third party to City of Regina employees.	Pages 11, 12, 13, 14, 16 and 17	18(1)(a), (b), (c) to pages 11 and 12 28(1) to pages 12, 13, 14, 16 and 17
G	Online comment forms for the City of Regina completed by residents of the City, also, responses from landowners and developers to correspondence sent from the City asking for their input regarding changes to proposed planning phases	Pages 19, 21, 22, 23, 24, 25, 27, 28, 29 and 32	18(1)(b) to pages 23, 24, 25 18(1)(c) to pages 23, 24, 25 28(1) to pages 19, 21, 22, 23, 24, 25, 27, 28, 29, 32
H	Online comment forms for the City of Regina completed by residents of the City	Pages 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53	28(1) to pages 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53
I	Online comment forms for the City of Regina completed by residents of the City	Pages 53, 54, 55, 56, 57 and 58	28(1) to pages 53, 54, 55, 56, 57, 58

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[10] The City qualifies as a "local authority" pursuant to subsection 2(f)(i) of LA FOIP. Stantec and Long Lake Investments Inc. qualify as third parties pursuant to subsection 2(k) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did the City comply with section 12 of LA FOIP?

[11] Subsection 7(2) of LA FOIP provides:

> **7**(2) The head shall give written notice to the applicant within 30 days after the application is made:

[12] Section 12 of LA FOIP provides that where a limited and prescribed circumstance exists, a local authority can extend the response time up to an additional 30 days. The City stated it was relying on subsection 12(1)(c) of LA FOIP, which provides as follows:

> **12**(1) The head of a local authority may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:
>
> …
> (c) where a third party notice is required to be given pursuant to subsection 33(1).
>
> (2) A head who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within 30 days after the application is made.
>
> (3) Within the period of extension, the head shall give written notice to the applicant in accordance with section 7.

[13] Subsection 12(2) of LA FOIP requires that the extension of time be provided to an Applicant, in writing, within 30 days of receiving the request.

[14] Section 12 of LA FOIP is clear that a government institution can extend the initial 30-day response deadline for a maximum of 30 more days. This means 60 days in total. However, this is only in limited circumstances, which are outlined in subsection 12(1) of LA FOIP (*Guide to LA FOIP*, Chapter 3, "Access to Records", updated June 29, 2021 [*Guide to LA FOIP*, Ch. 3] p. 75).

[15] The City received the Applicant's access to information requests on July 7, 2021. Its time to respond would have been August 6, 2021. With the extension, their new time to respond would have been September 5, 2021.

[16] The City received the Applicant's access to information request on July 7, 2021. The City sent the Applicant an extension of time letter dated July 29, 2021 pursuant to subsection 12(1)(c) of LA FOIP (22 days after the City received the request). This was within the time it was required to do so pursuant to subsection 12(2) of LA FOIP.

[17] Regarding its reliance on subsection 12(1)(c) of LA FOIP, the City stated as follows:

> This request consisted of 22 third parties and 6 government agencies. Due to the large number of third-parties, time was required for compiling third party records, researching third party and government contact information, and notifying these parties regarding records that may affect their interests. On August 4 and 5, 2021 the City provided third party and government notifications in accordance with S33 of the Act. This provided the third party and government agencies 20 days to respond back to the City with any objections they might have with the release of the records…

[18] The City issued its subsection 7 decision on September 2, 2021, which was within the period of extension pursuant to subsection 12(3) of LA FOIP. As such, I find the City complied with subsection 12 of LA FOIP.

3. Did the City properly apply subsection 16(1)(a) of LA FOIP?

[19] The City applied subsection 16(1)(a) of LA FOIP in part to Record D (page 7). Subsection 16(1)(a) of LA FOIP provides as follows:

> **16**(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:
>
> > (a) advice, proposals, recommendations, analyses or policy options developed by or for the local authority;

[20] Subsection 16(1)(a) 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

advice, proposals, recommendations, analyses or policy options developed by or for a local authority (*Guide to LA FOIP*, Ch. 4, p. 105).

[21] The following two-part test can be applied:

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?

2. Was the advice, proposals, recommendations, analyses and/or policy options developed by or for the local authority?

(*Guide to LA FOIP*, Ch. 4, pp. 105-108)

[22] Both parts of the test should be met in order for subsection 16(1)(a) of LA FOIP to apply. Below is an analysis to determine if the two-part test is met.

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?

[23] In its submission, the City asserted the information redacted from Record D (page 7) qualifies as "advice" and "recommendation".

[24] "Advice" is guidance offered by one person to another. It can include the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. Advice encompasses material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation (*Guide to LA FOIP*, Ch. 4, pp. 105-106)

[25] A "recommendation" is a specific piece of advice about what to do, especially when given officially; it is a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly than "advise" (*Guide to LA FOIP*, Ch. 4, pp. 105 – 107).

[26] From a review of the record, it appears the information is a description of a future course of action a government employee plans to take. This information neither qualifies as "advice" nor "recommendation".

[27] Since the first part of the two-part test is not met, there is no need to consider the second part of the test. I find that the City has not properly applied subsection 16(1)(a) of LA FOIP to the information redacted from Record D (page 7). As the City has applied no other exemptions to this information, I recommend that it release this information to the Applicant.

4. Did the City properly apply subsection 18(1)(a) of LA FOIP?

[28] The City applied subsection 18(1)(a) of LA FOIP in part to Record C (page 6), and Record F (pages 11 and 12) totaling three pages. Subsection 18(1)(a) of LA FOIP provides:

> **18**(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:
>
> (a) trade secrets of a third party;

[29] Subsection 18(1)(a) of LA FOIP is a mandatory, class-based exemption. It permits refusal of access in situations where a record contains the trade secrets of a third party. When making this assessment, the public body can apply the following test – does the record contain trade secrets of a third party?

[30] "Trade secret" is defined as information, including a plan or process, tool, mechanism or compound, which possesses each of the four following characteristics:

> i) the information must be secret in an absolute or relative sense (is known only by one or a relatively small number of people);
>
> ii) the processor of the information must demonstrate he/she has acted with the intention to treat the information as secret;
>
> iii) the information must be capable of industrial or commercial application; and

> iv) the processor must have an interest (e.g. an economic interest) worthy of legal protection.
>
> The information must meet all of the above criteria to be considered a trade secret.
>
> (*Guide to LA FOIP*, Ch. 4, p. 168).

[31] The types of information that could potentially fall in this class include the chemical composition of a product and the manufacturing process used. However, not every process or test would fall into this class, particularly when the process or test is common in a particular industry (*Guide to LA FOIP*, Ch. 4, p. 169).

[32] In its submission to my office, the City asserted the following:

> **Records C (page 6)**
> The third party responded to the City's third party notification that they believed the information, which if accessed could potentially reveal Stantec's trade secrets and/or financial, commercial, scientific and/or technical information supplied by Stantec in confidence and could reasonably be expected to significantly prejudice the competitive position of Stantec. The City agreed with the third part regarding exemptions to this record.
>
> The City reviewed the objections of the third party and submits the City correctly applied exemption 18(1)(a) to deny access to third party trade secrets.
>
> **Record F (pages 11 and 12)**
> The third party responded to the City's third party notification that this submission was shared with the City in secret and release of this information prior to when the matter comes before Regina Planning Commission and City Council could compromise the position and interests of the third party. The City agreed this submission was received in confidence from the third party and release of the information may damage the competitive competition for this third party.
>
> The City reviewed and agreed to the objections of the third party and submits the City correctly applied exemption 18(1)(a) to deny access to third party trade secrets.

[33] From a review of the records, it appears the information redacted in Record C (page 6) is information for joining a Microsoft Teams meeting. The City has not sufficiently stated how this information qualifies as a trade secret. On a review of the record, it does not appear the information qualifies as a trade secret. In this case I am not satisfied that the information redacted in Record C (page 6) can be described as a trade secret of a third party

pursuant to subsection 18(1)(a) of LA FOIP, and so the test is not met. I find the City did not properly apply subsection 18(1)(a) of LA FOIP to this information. Since the City has applied subsections 18(1)(b) and (c) of LA FOIP to this information as well, I will analyze it under those provisions also.

[34] Also, it appears the information in Record F (pages 11 and 12) includes a brief history of a third party's business relationship with the City, opinions/analysis/concerns regarding the City's land development policies/guidelines, and recommendations by the third party for changes to the City's land development decisions. The City and/or third party have not explained satisfactorily how this information meets the criteria for qualifying as a trade secret as laid out in paragraph [31] of this Report. Given the definition of a trade secret, on the face of the record it does not appear the information qualifies as a trade secret, and so the test is not met. I find that the City did not properly apply subsection 18(1)(a) of LA FOIP to this information. Since the City has applied subsections 18(1)(b) and (c) of LA FOIP to this information as well, I will analyze it under those provisions also.

5. Did the City properly apply subsection 18(1)(b) of LA FOIP?

[35] The City applied subsection 18(1)(b) of LA FOIP in part to Record C (page 6), Record F (pages 11 and 12) and Record G (pages 23, 24 and 25) totaling six pages. Subsection 18(1)(b) of LA FOIP provides:

> **18**(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:
>
> …
> (b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to the local authority by a third party;

[36] Subsection 18(1)(b) of LA FOIP is a mandatory, class-based exemption. It permits refusal of access in situations where a record contains financial, commercial, scientific, technical or labour relations information that was supplied in confidence to a local authority by a third party (*Guide to LA FOIP*, Ch. 4, p. 170).

[37] My office uses the following three-part test to determine if subsection 18(1)(b) of LA FOIP applies:

> 1. Is the information financial, commercial, scientific, technical or labour relations information of a third party?
>
> 2. Was the information supplied by the third party to a local authority?
>
> 3. Was the information supplied in confidence implicitly or explicitly?
>
> (*Guide to LA FOIP*, Ch. 4, pp. 170-174)

[38] Following is an analysis of the application of each part of this three-part test.

1. Is the information financial, commercial, scientific, technical or labour relations information of a third party?

[39] The City stated financial, commercial, scientific and technical information is involved.

[40] "Financial information" is information regarding monetary resources, such as financial capabilities, assets and liabilities, past or present. Common examples are financial forecasts, investment strategies, budgets, and profit and loss statements. The "financial information" must be specific to a third party (*Guide to LA FOIP*, Ch. 4, p. 170).

[41] "Commercial information" is information relating to the buying, selling or exchange of merchandise or services. Types of information included in the definition of "commercial information" can include:

- offers of products and services a third party business proposes to supply or perform;
- a third party business' experiences in commercial activities where this information has commercial value;
- terms and conditions for providing services and products by a third party;

- list of customers, suppliers or sub-contractors compiled by a third party business for its use in its commercial activities or enterprises – such lists may take time and effort to compile, if not skill;

- methods a third party business proposes to use to supply goods and services; and

- number of hours a third party business proposes to take to complete contracted work or tasks.

(*Guide to LA FOIP*, Ch. 4, pp. 170-171)

[42] "Scientific information" is information exhibiting the principles or methods of science. The information could include designs for a product and testing procedures or methodologies. It is information belonging to an organized field of knowledge in the natural, biological or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypothesis or conclusions and be undertaken by an expert in the field. Finally, "scientific information" must be given a meaning separate from technical information (*Guide to LA FOIP*, Ch. 4, p. 171).

[43] "Technical information" is information relating to a particular subject, craft or technique. Examples are system design specifications and the plans for an engineering project. It is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. It will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, "technical information" must be given a meaning separate from scientific information (*Guide to LA FOIP*, Ch. 4, p. 171).

[44] In its submission to my office, the City stated the following:

> **Records C (page 6)**
> ...This email contained links to a Team Meeting
>
> The third party responded to the City's third party notification that they believed the information, which if accessed could potentially reveal Stantec's trade secrets and/or financial, commercial, scientific and/or technical information supplied by Stantec to

the City of Regina in confidence and could reasonably be expected to significantly prejudice the competitive position of Stantec. The City did receive the information in confidence and agreed with the third [sic] regarding exemptions to this record.

Record F (pages 11 and 12)
...The third party responded to the City's third party notification that this submission was shared with the City in secret and release of this information prior to when the matter comes before Regina Planning Commission and City Council could compromise the position and interests of the third party. The City did receive the information in confidence and agreed with the third-parties arguments and request for redactions.

The City reviewed the objections of the third party and submits the City correctly applied exemption 18(1)(b) to deny access to third party commercial information.

Record G (pages 23, 24 and 25)
Pages 23 and 24
The third party responded to the City's third party notification that this information was shared with the City in confidence. The record contains commercial information and release of this information could cause financial loss by prejudicing their competitive position in relation to future applications and may interfere with the contractual or other negotiations of the third party. The City agreed this was received in confidence and agreed with the third-parties request for redactions.

Page 25 – Paragraph starting with 'There are a lot of Phase !..."
This paragraph provides information regarding the developing of lands by the third party which is commercial information. Release of this information may provide an advantage to another competitor.

The City reviewed the objections of the third party and submits the City correctly applied exemption 18(1)(b) to deny access to third party commercial information.

[45] Regarding Records C (page 6) and G (pages 23 and 24), the City only stated that the information withheld qualified as financial, commercial, scientific, and/or technical information of a third party. The City did not describe how any of these are involved, or provide evidence describing how the information withheld may be considered as such. Given the definitions of financial, commercial, scientific, or technical information, I am not able to tell on the face of the record that the information qualifies under these definitions. I find the City did not properly apply subsection 18(1)(b) of LA FOIP to this information. I will consider these Records under subsection 18(1)(c) of LA FOIP also.

[46] Regarding Record F (pages 11 and 12), the City did not indicate that the information withheld qualified as commercial, financial, scientific or technical information. I will consider on the face of the record if information may qualify as financial, commercial, scientific, or technical information. On the face of the record it appears the information is past financial capabilities, assets, and liabilities. This information can be described as financial information. Also included in the information is a third party's business experiences in commercial activities. This can be described as commercial information. Part 1 of the test has been met for this information, and so I will consider the second part of the test.

[47] Regarding Record G (page 25), the City describes the information withheld as "...the developing of lands by the third party which is commercial information". Given the definitions of financial, commercial, scientific, or technical information, on the face of the record it does not appear the information qualifies under these definitions and so the first part of the test is not met. I find the City did not properly apply subsection 18(1)(b) of LA FOIP to this information. I will consider this information under subsection 18(1)(c) of LA FOIP.

[48] I will now consider if Record F (pages 11 and 12) meet the requirements of parts 2 and 3 of the test.

2. Was the information supplied by the third party to a local authority?

3. Was the information supplied in confidence implicitly or explicitly?

[49] "Supplied" means provided or furnished. Information may qualify as "supplied" if it was directly supplied to a local authority by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party (*Guide to LA FOIP*, Ch 4, p. 172).

[50] In its submission, the City has identified the third parties as Stantec and Long Lake Investments Inc. Upon a review of the records and my office's correspondence with the third parties, it appears the information was supplied by the third parties to the City. The

second part of the test is met. I will now consider if the information was supplied in confidence, either explicitly or implicitly.

[51] "In confidence" usually describes a situation of mutual trust in which private matters are relayed or reported. Information obtained "in confidence" means that the supplier of the information has stipulated how the information can be disseminated. In order for confidence to be found, there must be an implicit or explicit agreement or understanding of confidentiality on the part of the local authority and the third party providing the information. "Implicitly" means that the confidentiality is understood even though there is no actual statement of confidentiality, agreement, or other physical evidence of the understanding that the information will be kept confidential. "Explicitly" means that the request for confidentiality has been clearly expressed, distinctly stated or made definite. There may be documentary evidence that shows that the information was supplied on the understanding that it would be kept confidential (*Guide to LA FOIP*, Ch. 4, p. 174).

[52] The expectation of confidentiality must be reasonable and must have an objective basis. Whether the information is confidential will depend on its content, its purposes, and the circumstances in which it was compiled or communicated *(Corporate Express Canada, Inc. v. The President and Vice Chancellor of Memorial University of Newfoundland, Gary Kachanoski, (2015))*.

[53] In its submission, the City indicated it received the information from the third party in confidence and agreed with the third party's request for redactions. The City did not provide further arguments to indicate whether the information was supplied implicitly or explicitly in confidence.

[54] First, I will assess if information was supplied explicitly by the third party to the City.

[55] Factors considered when determining whether a document was supplied in confidence "explicitly" include (not exhaustive):

- the existence of an express condition of confidentiality between the local authority and the third party;
- the fact that the local authority requested the information be supplied in a sealed envelope and/or outlined its confidentiality intentions to the third party prior to the information being supplied.

(*Guide to LA FOIP*, Ch. 4, p. 176).

[56] The preceding factors are not a test, but rather guidance on factors to consider. It is not an exhaustive list. Each case will require different supporting arguments. The bare assertion that the information was supplied implicitly in confidence would not be sufficient.

[57] From a review of the City's submission and Record F (pages 11 and 12), the City did not articulate satisfactorily how the information was supplied explicitly. On the face of the record, and analyzing it through the factors described in paragraph [56] of this Report, it is not apparent that the information was supplied explicitly in confidence by the third party to the City.

[58] Next, I will assess if information was supplied implicitly by the third party to the City.

[59] Factors considered when determining whether a document was supplied in confidence "implicitly" include (not exhaustive):

- What is the nature of the information? Would a reasonable person regard it as confidential? Would it ordinarily be kept confidential by the third party or the local authority?

- Was the information treated consistently in a manner that indicated a concern for its protection by the third party and the local authority from the point at which it was supplied until the present time?

- Is the information available from sources to which the public has access?

- Does the local authority have any internal policies or procedures that speak to how records such as the one in question are to be handled confidentially?

- Was there a mutual understanding that the information would be held in confidence?

(*Guide to LA FOIP*, Ch. 4, p. 175).

[60] "Mutual understanding" means that the local authority and the third party both had the same understanding regarding the confidentiality of the information at the time it was supplied. If one party intends the information to be kept confidential but the other does not, the information is not considered to have been supplied in confidence. However, mutual understanding alone is not sufficient. Additional factors must exist in addition (*Guide to LA FOIP*, Ch. 4, p. 175).

[61] The above factors are not a test but rather guidance on factors to consider. It is not an exhaustive list. Each case will require different supporting arguments. The bare assertion that the information was supplied implicitly in confidence would not be sufficient.

[62] From a review of the City's submission and Record F (pages 11 and 12) the City did not articulate satisfactorily how the information was confidential. On the face of the record, and analyzing it through the factors in determining the supply of documents as described at paragraph [60] of this Report, it is not apparent that the information was supplied in confidence by the third party to the City. Part 3 of the test is not met. I find, therefore, that the City did not properly apply subsection 18(1)(b) of LA FOIP to Record F (pages 11 and 12). I will analyze this information under subsection 18(1)(c) of LA FOIP next.

6. Did the City properly apply subsection 18(1)(c) of LA FOIP?

[63] The City applied subsection 18(1)(c) of LA FOIP to Records C (page 6), F (pages 11 and 12) and G (pages 23, 24, and 25) totaling six pages. Subsection 18(1)(c) of LA FOIP provides:

> **18**(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:
>
> …
> (c) information, the disclosure of which could reasonably be expected to:
>
> (i) result in the financial loss or gain to;

(ii) prejudice the competitive position of; or

(iii) interfere with the contractual negotiations of;

a third party;

[64] Subsection 18(1)(c) of LA FOIP is a mandatory, harm-based provision. It permits refusal of access in situations where disclosure could reasonably be expected to result in the harms outlined at subclauses (i), (ii) and (iii). Local authorities and third parties should not assume the harms are self-evident. The harm must be described in a precise and specific way in order to support the application of the provision (*Guide to LA FOIP*, Ch. 4, p. 180).

[65] "Harm-based exemptions" are based on a determination by the local authority that it is reasonable to expect that some injury, harm or prejudice will occur if the information is released. For harm-based exemptions to apply there must be objective grounds for believing that disclosing the information could result in the harm alleged. The local authority (or third party) does not have to prove that the harm is probable, but needs to show there is a likelihood the harm will occur if any of the information or records were released (*Guide to LA FOIP*, Ch. 4, p. 8).

[66] I would like to note that subsection 18(1)(c) of LA FOIP is not a single exemption, it is in fact three exemptions – 18(1)(c)(i), 18(1)(c)(ii) and 18(1)(c)(iii).

[67] Although the City did not differentiate which part of subsection 18(1)(c) of LA FOIP it has applied to the Records, it made the following assertions:

> Record C (page 6)
> The third party responded to the City's third party notification that they believed the information, which if accessed could potentially reveal [third party's] trade secrets and/or financial, commercial, scientific and/or technical information supplied by [third party] to the City of Regina in confidence and could reasonably be expected to significantly prejudice the competitive position of [third party]. The City did receive the information in confidence and agreed with the third [SIC] regarding exemptions to this record.
>
> Record F (pages 11 and 12)

> ...The third party responded to the City's third party notification that this submission was shared with the City in secret and release of this information prior to when the matter comes before Regina Planning Commission and City Council could compromise the position and interests of the third party. This submission contains commercial information of the third party which could cause them financial loss and prejudice the competitive edge of the third party. The City did receive the information in confidence and agreed with the [sic] request for redactions.
>
> Record G (pages 23 and24)
> ...The record contains commercial information and release of this information could cause financial loss by prejudicing their competitive position in relation to future applications and may interfere with the contractual or other negotiations of the third party. The City agreed this was received in confidence and agreed with the [sic] request for redactions.
>
> Record G (page 25)
> ...Release of this information may provide an advantage to another competitor resulting in financial loss, may prejudice the competitive position and interfere with contractual or other negotiations of the third party.

Subsection 18(1)(c)(i) of LA FOIP

[68] Subsection 18(1)(c)(i) of LA FOIP is a mandatory, harm-based exemption. It permits refusal of access in situations where disclosure of information could reasonably be expected to result in financial loss or gain to a third party (*Guide to LA FOIP*, Ch. 4, p. 181).

[69] The following two-part test can be applied:

> 1. What is the financial loss or gain being claimed?
>
> 2. Could release of the record reasonably be expected to result in financial loss or gain to a third party?
>
> (*Guide to LA FOIP*, Ch. 4, p. 181)

1. What is the financial loss or gain being claimed?

[70] "Financial loss or gain" must be monetary, have a monetary equivalent, or value (e.g. loss of revenue or loss of corporate reputation) (*Guide to LA FOIP*, Ch. 4, p. 181).

[71] The City did not provide any information with respect to the expected financial loss or gain to the third party as a result of disclosure of information such as in paragraph [71] of this Report.

[72] As this is a harms-based provision, the City needs to establish a basis for believing financial loss or gain could come to the third party by disclosing the records. This can be done, for example, by verifying through evidence or supporting documentation, which the City and third party have not done. In my office's Review Report 219-2018, I describe the following as examples of evidence – projected percentage/amount of revenue loss and how the loss would occur. On the face of the record, I am not able to determine that the information could reasonably be expected to cause financial loss or gain to the third party. As such, the first part of the test is not met. As both parts of the test must be met, there is no need to consider the second part. Therefore, I find the City did not properly apply subsection 18(1)(c)(i) of LA FOIP. I will now consider if subsection 18(1)(c)(ii) of LA FOIP applies.

Subsection 18(1)(c)(ii) of LA FOIP

[73] Subsection 18(1)(c)(ii) of LA FOIP is a mandatory, harm-based exemption. It permits refusal of access in situations where disclosure of information could reasonably be expected to prejudice the competitive position of a third party (*Guide to LA FOIP*, Ch. 4, p. 186).

[74] The following two-part test can be applied:

1. What is the prejudice to a third party's competitive position that is being claimed?
2. Could release of the record reasonably be expected to result in the prejudice?

(*Guide to LA FOIP*, Ch. 4, p. 186)

1. What is the prejudice to a third party's competitive position that is being claimed?

[75] "Prejudice" in this context refers to detriment to the competitive position of a third party (*Guide to LA FOIP*, Ch. 4, p. 186).

[76] "Competitive position" means the information must be capable of use by an existing or potential business competitor, whether or not that competitor currently competes for the same market share (*Guide to LA FOIP*, Ch. 4, p. 186).

[77] The City did not provide any information or details regarding what prejudice could occur as a result of disclosing the records, and the third party did not cite subsection 18(1)(c)(ii) of LA FOIP. Again, the local authority needed to provide my office with some detail and supporting evidence regarding the resulting harm in order to make its case, but did not do so. On the face of the record it is not apparent the alleged prejudice could occur if the information is released. As such, the first part of the test is not met. As both parts of the test must be met, there is no need to consider the second part. Therefore, I find the City did not properly apply subsection 18(1)(c)(ii) of LA FOIP. I will now consider if subsection 18(1)(c)(iii) of LA FOIP applies.

Subsection 18(1)(c)(iii) of LA FOIP

[78] Subsection 18(1)(c)(iii) of LA FOIP is a mandatory, harm-based exemption. It permits refusal of access in situations where disclosure of information could reasonably be expected to interfere with the contractual or other negotiations of a third party (*Guide to LA FOIP*, Ch. 4, p. 191).

[79] The following two-part test can be applied:

> 1. Are there contractual or other negotiations occurring involving a third party?
>
> 2. Could release of the record reasonably be expected to interfere with the contractual or other negotiations of a third party?
>
> (*Guide to LA FOIP*, Ch. 4, pp. 191-192)

1. Are there contractual or other negotiations occurring involving a third party?

[80] 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 (*Guide to LA FOIP*, Ch. 4, pp. 191-192).

[81] If there are contractual or other negotiations occurring that involve the third parties, the City did not say so, or provide any such details. Neither the City nor the third party provided information or supporting evidence to prove the existence of contractual or other negotiations. On the face of the records it is not apparent that contractual or other negotiations occurred that involve the third parties. As such, the first part of the test is not met. As both parts of the test must be met, there is no need to consider the second part. Therefore, I find the City did not properly apply subsection 18(1)(c)(iii) of LA FOIP to the information withheld. As the City also applied subsection 28(1) of LA FOIP to the same portions of Record G (pages 23, 24 and 25), I will still review these pages under that exemption later in this Report. As the City applied no other exemptions to Records C (page 6) and F (pages 11 and 12), I recommend the City release those pages to the Applicant.

7. Did the City properly apply subsection 28(1) of LA FOIP?

[82] Subsection 28(1) of LA FOIP is a mandatory exemption that provides as follows:

> **28**(1) No local authority shall disclose personal information in its possession or under its control without consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 29.

[83] Subsection 28(1) of LA FOIP protects the privacy of individuals whose personal information may be contained within records responsive to an access to information request made by someone else. Subsection 28(1) of LA FOIP requires a local authority to have the consent of the individual whose personal information is in the record prior to disclosing it. Without consent, personal information cannot be released unless one of the provisions under subsection 28(2) of LA FOIP applies (*Guide to LA FOIP*, Ch. 4, pp. 240-241).

[84] When dealing with information in a record that appears to be personal information, the first step is to confirm the information indeed qualifies as personal information pursuant to subsection 23(1) of LA FOIP (*Guide to LA FOIP*, Ch. 4, p. 240). Subsection 23(1) of LA FOIP provides 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 the 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 of 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.

[85] In its submission to my office, the City applied subsection 28(1) of LA FOIP to Records C (page 4), F (pages 12, 13, 14, 16 and 17), G (pages 19, 21, 22, 23, 24, 25, 27, 28, 29 and 32), H (pages 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53) and I (pages 53, 54, 55, 56, 57 and 58).

[86] Before I begin my review of subsection 28(1) of LA FOIP, I note that in my office's Review Report 082-2017, I stated that contact information of those individuals acting in their capacity as professionals would be considered business card information. Business card information is the type of information found on a business card such as name, job title, work address, work telephone numbers, etc. This type of information is generally not considered personal in nature and therefore would not be considered personal information.

[87] I will continue my analysis on each group of records.

[88] Record C (page 4) contains the email address of an individual who appears to be working in their professional capacity, and so is not personal information. I find the City did not properly apply subsection 28(1) of LA FOIP to this information and recommend the City release it to the Applicant.

[89] Record F (pages 12, 13, 14, 16 and 17) contains the email addresses and telephone number of individuals working in a professional capacity, and so is also not personal information. I find the City did not properly apply subsection 28(1) of LA FOIP to this information and recommend the City release it to the Applicant.

[90] Record G (pages 19, 21, 22, 23, 24, 25, 27, 28, 29 and 32) contains contact information of third party individuals (private citizens). There is also information that is personal in nature to these individuals. This is personal information as defined by subsections 23(1)(e) and (k)(i) of LA FOIP. I find the City properly applied subsection 28(1) of LA FOIP to this

information and recommend it continue to withhold it pursuant to subsection 28(1) of LA FOIP.

[91] Record H (pages 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53) contains the contact information (e.g., email addresses and home addresses) of third party individuals (private citizens) or information relating to their location, which is personal information as defined by subsection 23(1)(e) of LA FOIP. I find the City properly applied subsection 28(1) of LA FOIP to this information and recommend it continue to withhold it pursuant to subsection 28(1) of LA FOIP.

[92] Record I (pages 53, 54, 55, 56, 57 and 58) contains contact information (e.g., email addresses and home addresses) of third party individuals (private citizens). There is also information that is personal in nature to those individuals. This is personal information as defined by subsections 23(1)(e) and (k)(i) of LA FOIP. I find the City properly applied subsection 28(1) of LA FOIP to this information and recommend it continue to withhold it pursuant to subsection 28(1) of LA FOIP.

IV FINDINGS

[93] I find the City complied with section 12 of LA FOIP.

[94] I find that the City did not properly apply subsection 16(1)(a) of LA FOIP to Record D (page 7).

[95] I find that the City did not properly apply subsections 18(1)(a), (b), and (c) of LA FOIP to Records C (page 6) and F (pages 11 and 12).

[96] I find that the City properly applied subsection 28(1) of LA FOIP where it applied it in Records G, H and I

[97] I find that the City did not properly apply subsection 28(1) of LA FOIP where it applied it in Records C and F.

V RECOMMENDATIONS

[98] I recommend, within 30 days, that the City release to the Applicant the information withheld pursuant to subsections 16 (1)(a) of LA FOIP in Record D (page 7).

[99] I recommend, within 30 days, that the City release to the Applicant the information withheld pursuant to subsections 18(1)(a), (b) and (c) of LA FOIP in Records C (page 6) and F (pages 11 and 12).

[100] I recommend that the City continue to withhold the information described as personal information in records G, H and I pursuant to subsection 28(1) of LA FOIP.

[101] I recommend, within 30 days, that the City release the information where it applied subsection 28(1) of LA FOIP in Records C and F to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 6th day of December, 2022.

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