



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## REVIEW REPORT 236-2023

### Holy Family Roman Catholic Separate School Division No. 140

January 23, 2024

**Summary:** The Applicant submitted an access to information request to the Holy Family Roman Catholic Separate School Division No. 140 (School Division). The School Division in its response withheld the record, in part, pursuant to section 20 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant requested a review of the School Division's decision. The Commissioner found that the School Division properly applied section 20 of LA FOIP and recommended that the School Division continue to withhold portions of the record.

#### I BACKGROUND

[1] On January 25, 2023, the Applicant submitted an access to information request to the Superintendent of the Holy Family Roman Catholic Separate School Division (School Division) under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) stating:

I have requested the Sacred Heart School Lockdown policy – policy on lockdown (OP5104), [sic] The Document OP5140 states that each school is to develop its own school lockdown policy, individually. I have requested this local policy from Sacred Heart School principal and requested it from Terry Jordens, Superintendent of Student Services and Assessment. I have requested this information since Nov 17, 2022, and again on Jan 24, 2023. It is my assumption that this policy does not exist and is now being created to curtail the misuse of the policy. The Ombudsmans office would like me to send this request to Director Gwen Keith.

- [2] Also on January 25, 2023, the Applicant requested a waiver of processing fees on the grounds of financial hardship, explaining that one parent works part time, the other is on disability and that they have a dependent child on disability of protected ground.
- [3] On February 1, 2023, the School Division acknowledged receipt of the access to information request and confirmed that the fee had been waived. The School Division indicated that a response will be received within 30 days from the application date.
- [4] In correspondence on February 6, 2023, the School Division in its section 7 decision, withheld the record, in part, pursuant to section 20 of LA FOIP.
- [5] Also on February 6, 2023, the Applicant in response to the School Division stated that they requested the policy and not the procedure. In correspondence on the same day the School Division responded saying:
- Policies are generally put in place by the Board of Education and are very broad in nature, they will say that schools must have procedures in place for different circumstances, but the procedures are developed at the division and school level. I took a look at the division operations and procedures, and it states: "Each, principal, together with the staff, shall develop Lockdown Procedures for their school in consultation with the local Policy Authority."
- [6] Again, on February 6, 2023, the Applicant responded saying, "Thank you for sending me the procedure [sic] Yes that is exactly what I saw-and that POLICY created at the school level is what I am requesting".
- [7] On that same day, the School Division responded that there were no policies at the school level, only the procedure which had been sent to them. The School Division informed the Applicant of their right to request a review of the decision with my office.
- [8] On September 29, 2023, the Applicant asked my office to review the School Division's decision to deny access to part of the record, stating, "I have completed a request for review ... I have a human rights complaint against the school. I have a [SIC] investigator that needs unredacted forms".

[9] On November 17, 2023, the Applicant in correspondence with my office confirmed that they were asking for an unredacted copy of the document released by the School Division.

[10] On November 24, 2023, my office sent a notification of this review to the Applicant and to the School Division. My office invited both parties to provide submissions. My office also requested a copy of the record from the School Division.

[11] In correspondence on December 22, 2023, the School Division provided my office with a copy of the record at issue and an Index of Records. The School Division on this day also provided a submission on why section 20 of LA FOIP applied to the withheld portions of the record.

## **II RECORDS AT ISSUE**

[12] The record is a one-page document that indicates the School Division's lock down procedure. The School Division denied access to the document, in part, pursuant to section 20 of LA FOIP.

## **III DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction?**

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

### **2. Did the School Division properly apply section 20 of LA FOIP?**

[14] The School Division applied section 20 of LA FOIP to portions of the record.

[15] Section 20 of LA FOIP provides:

**20** A head may refuse to give access to a record if the disclosure could threaten the safety or the physical or mental health of an individual.

[16] My office's *Guide to LA FOIP*, Chapter 4, "Exemptions from the Right of Access" (*Guide to LA FOIP*, Ch. 4) at page 226 states that section 20 of LA FOIP is a discretionary, harm-based exemption. It permits refusal of access in situations where disclosure of a record could threaten the safety or the physical or mental health of an individual.

[17] Page 226 of the *Guide to LA FOIP*, Ch. 4, also provides that every jurisdiction in Canada (except Quebec) has a similarly worded provision as Saskatchewan's section 20 of LA FOIP. However, the thresholds for every other jurisdiction are higher and use the "*could reasonably be expected*" threshold. No other jurisdiction in Canada has the same lower threshold as Saskatchewan's section 20. The following test can be applied:

- ***Could disclosure of the record threaten the safety or the physical or mental health of an individual?***

[18] As per page 226 of the *Guide to LA FOIP*, Ch. 4, for section 20 of LA FOIP, the question that must be answered is could disclosure of the record threaten the safety or the physical or mental health of an individual? The threshold for "could" is somewhat lower than a reasonable expectation. On the spectrum, speculation is at one end and probable (or "could reasonably be expected") is at the other. The middle ground for "could" therefore, is that which is possible.

[19] Importantly, as indicated on page 226 of the *Guide to LA FOIP*, Ch. 4, "possible" means capable of existing, happening, or being achieved; that which is not certain or probable.

[20] Further, page 227 of the *Guide to LA FOIP*, Ch. 4, explains that, generally, this means the local authority must assess the risk and determine whether there are reasonable grounds for concluding there is a danger to the health or safety of any person. That assessment must be specific to the circumstances of the case under consideration. The inconvenience, upset or unpleasantness of dealing with difficult or unreasonable people is not sufficient to trigger

the exemption. The threshold cannot be achieved based on unfounded, unsubstantiated allegations.

- [21] By the definition on page 227 of the *Guide to LA FOIP*, Ch. 4, to “threaten” means to be likely to injure; be a source of harm or danger to. It means to create the possibility or risk of harm or well-being.
- [22] Again, by the definition on page 227 of the *Guide to LA FOIP*, Ch. 4, “safety” means the state of being protected from or guarded against hurt or injury, freedom from danger.
- [23] “Physical health” as defined on page 227 of the *Guide to LA FOIP*, Ch. 4, refers to the well-being of an individual’s physical body. Determination of the effect of a release of information on an individual’s physical health must consider the current or normal state of health of persons who may be affected by the release of information, as well as the decline in health that is expected to occur if the information is disclosed to the applicant.
- [24] “Mental health” as outlined on page 228 of the *Guide to LA FOIP*, Ch. 4, means the condition of a person in respect of the functioning of the mind. It means the ability of a person’s mind to function in its normal state. Determination of the effect of a release of information on a person’s mental health must, where practicable, be based on a subjective evaluation made on a case-by-case basis.
- [25] On page 227 of the *Guide to LA FOIP*, Ch. 4, it is provided that the local authority should be able to detail what the harm is and to whom the harm threatens if the information were released.
- [26] In its submission to my office, the School Division advised that as part of its emergency response planning and procedures, staff and students practice safety drills in order to be prepared and know what is expected when a situation arises. In this case, the School Division withheld the code phrase to which staff are expected to react in order to proceed

with the lock down procedure. Instructions to the students during the lock down period and the “all-clear” procedure for staff were also withheld.

[27] The School Division further explained that if locations and codes contained in the responsive record were released, it would have no control as to where the document is published and shared. This could potentially compromise the safety and security of staff and students.

[28] Considering the sensitivity of the severed information, I am convinced that if the locations and codes were disclosed to the public, it could be expected that an intruder to the school could, at any time, know where and how to access the staff and students and threaten their safety or physical or mental health.

[29] In my office’s [Review Report 095-2023](#) , I noted:

[86] ... the City only needs to establish that there is a possibility of harm to meet the test for the application of section 20 of LA FOIP. Based on the information provided by the City and the information in the records, I am satisfied that the disclosure of the witnesses’ names and contact details ...could threaten their safety or physical or mental health. Therefore, I find that the City properly applied section 20 of LA FOIP. I recommend that the City continue to withhold this information.

[30] I find similarly in this case. The School Division has established the possibility of harm arising from a disclosure of the severed information to the Applicant. I am convinced, based on the nature of the information involved and the School Division’s explanation, that it has met the threshold for the application of this exemption. I find that the School Division properly applied section 20 of LA FOIP in withholding portions of the record.

#### **IV FINDINGS**

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

[32] I find that the School Division properly applied section 20 of LA FOIP.

**V RECOMMENDATION**

[33] I recommend that the School Division continue to withhold the severed portions of the record pursuant to section 20 of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 23rd day of January, 2024.

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