



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 238-2023

Regina Police Service

February 20, 2024

Summary:

The Applicant made an access to information request to the Regina Police Service (RPS). RPS partially denied access to certain records, in part, pursuant to subsections 13(1)(b), 14(1)(k) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant was not satisfied with RPS' response and requested the Commissioner review the exemptions it applied. During the review, RPS informed the Commissioner and the Applicant that it was relying on subsection 13(2) of LA FOIP instead of subsection 13(1)(b) of LA FOIP, and also released more pages to the Applicant. The Commissioner found that RPS properly applied subsections 14(1)(k) and 28(1) of LA FOIP to parts of the record, and that it did not properly apply subsection 13(2) of LA FOIP. The Commissioner recommended that RPS continue to withhold parts of the record where it applied subsections 14(1)(k) and 28(1) of LA FOIP. The Commissioner also recommended that RPS release pages 9 to 17, in full, to the Applicant within 30 days of issuance of this Report.

I BACKGROUND

- [1] On August 28, 2023, Regina Police Service (RPS) received the Applicant's access to information request that stated:

Report related to Aug. 6th fire at [property address] (fire incident # [incident number])
police file #[police file number]

- [2] On September 20, 2023, RPS responded to the Applicant denying access to the records, in part, pursuant to subsections 13(1)(b), 14(1)(k) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

- [3] On September 28, 2023, my office received a request for review from the Applicant regarding the exemptions cited by RPS.
- [4] On November 16, 2023, my office provided notice to the Applicant and RPS of my office's intention to undertake a review.
- [5] On January 12, 2023, RPS contacted my office and explained that it was no longer relying on subsection 13(1)(b) of LA FOIP, but instead was relying on subsection 13(2) of LA FOIP to deny access. It also confirmed that in this process it was releasing two more pages, in part, to the Applicant. The same day, RPS issued a revised response to the Applicant, pursuant to section 7 of LA FOIP.
- [6] On January 16, 2023, RPS provided its submission to my office. The Applicant did not provide a submission to my office.

II RECORDS AT ISSUE

- [7] The record at issue includes 16 pages. RPS withheld seven pages, in part, pursuant to subsections 14(1)(k) and 28(1) of LA FOIP; and nine pages in full pursuant to subsection 13(2) of LA FOIP. RPS applied the exemptions as noted below:

Page number	Description of record	LA FOIP exemption applied
1	General Report	14(1)(k) and 28(1)
3	RPS Summary Supplement Report	28(1)
4	Supplementary Occurrence Report (SOR) – page 1	14(1)(k) and 28(1)
5	SOR – page 2	14(1)(k) and 28(1)
6	SOR – page 3	28(1)
7 to 8	RPS Officer's handwritten notes – two pages	28(1)
9 to 17	City of Regina – Fire Incident Report	13(2)

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[8] RPS qualifies as a “local authority” pursuant to subsection 2(1)(f)(viii.1) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did RPS properly apply subsection 14(1)(k) of LA FOIP?

[9] RPS applied subsection 14(1)(k) of LA FOIP to pages 1, 4 and 5 of the record, in part. The portions of the record disclosed to the Applicant, identify these as “general report” and “supplementary occurrence report” dated August 6, 2023.

[10] Subsection 14(1)(k) of LA FOIP provides:

14(1) A head may refuse to give access to a record, the release of which could:

...

(k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

[11] Subsection 14(1)(k) of LA FOIP is a discretionary exemption that contains both a class and harm-based component. It permits refusal of access in situations where release of a record could interfere with a law enforcement matter or disclose information respecting a law enforcement matter (*Guide to LA FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated October 18, 2023 (*Guide to LA FOIP*, Ch. 4), p.78).

[12] Pages 78 to 81 of the *Guide to LA FOIP*, Ch. 4, outline the following two-part test:

1. Is there a law enforcement matter involved?
2. Does any of the following exist:
 - a. Could release of information interfere with a law enforcement matter?
 - b. Could release disclose information with respect to a law enforcement matter?

1. Is there a law enforcement matter involved?

[13] Pages 78 and 79 of the *Guide to LA FOIP*, Ch. 4, explain that “law enforcement” matter includes:

- Policing, including criminal intelligence operations; and
- Investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment.

[14] Page 79 of the *Guide to LA FOIP*, Ch. 4, provides the following definitions:

- “Policing” refers to the activities of police services. This means activities carried out under the authority of a statute regarding the maintenance of public order, detection and prevention of crime or the enforcement of law.
- “Investigation”, in general, as a systematic process of examination, inquiry and observations.
- “Inspection”, in general, as a careful examination.
- “Matter” should be given its plain and ordinary meaning. It does not necessarily always have to apply to some specific on-going investigation or proceeding.

[15] In its submission to my office, RPS explained:

...It was a lawful investigation, being conducted by members of the Regina Police Service. The situation can be appropriately defined as a Law Enforcement Matter as it involved police officers fulfilling their duties in accordance with *The Police Act*, *The Mental Health Services Act*, and or Criminal Code... Additionally, there was potential for a warrant to be issued under *The Mental Health Services Act*, or possible Criminal Code charges...

[16] During this review, my office asked RPS to provide further explanation regarding the specific sections/subsections of *The Police Act*, *The Mental Health Services Act*, and the *Criminal Code* on which it was relying.

[17] RPS provided the following information:

The Police Act – Section 36(2) of the act outlines the powers of police officers:

36(2) Unless otherwise indicated in his or her appointment, a member has the power and the responsibility to:

- (a) perform all duties that are assigned to constables or peace officers in relation to:
 - (i) the preservation of peace;
 - (ii) the prevention of crime and offences against the laws in force in the municipality; and
 - (iii) the apprehension of criminals, offenders and others who may lawfully be taken into custody;
- (b) execute all warrants and perform all duties and services under or in relation to them that, pursuant to the laws in force in the municipality, may lawfully be executed and performed by constables or peace officers; and
- (c) perform all duties that may lawfully be performed by constables or peace officers in relation to the escorting and conveyance of persons in lawful custody to and from courts, places of confinement, correctional facilities or camps, hospitals or other places.

...

The Mental Health Services Act - Section 20(1) – Powers of Peace Officers in certain cases.

20(1) A peace officer may apprehend a person without a warrant and convey that person as soon as is reasonably practicable to a place where he or she may be examined by a physician if the peace officer has reasonable grounds to believe that the person is:

- (a) suffering from a mental disorder; and
- (b) likely to cause harm to himself or herself or to others or to suffer substantial mental or physical deterioration if he or she is not detained in a mental health centre.

(2) A person apprehended pursuant to subsection (1) must be examined by a physician as soon as is reasonably practicable and in all cases within 24 hours after his or her apprehension.

...

The ***Criminal Code*** - Section 432, Arson and Other Fires is a chargeable offence under the criminal code, even though charges weren't laid in this case, there was a possibility of charge given the information received once officers were on scene. Use of

[subsection] 14(1)(k) [of FOIP] doesn't require charges to be laid in order for the exemption to be used.

[18] Upon review of the records, I note that pages 1, 4 and 5 contain details of a law enforcement matter; these pages contain details of the RPS officers' policing, inspection and investigation regarding this fire incident. In my office's Review Reports [115-2020](#), [116-2020](#), [117-2020](#) and [111-2022](#), I took the approach that police investigations into possible violations of the *Criminal Code* and activities under *The Mental Health Services Act* (MHSA) qualify as lawful investigations. Following the same approach here, I find that the first part of the test for subsection 14(1)(k) of LA FOIP is met.

2. Does one of the following exist?

...

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

[19] Page 80 of the *Guide to LA FOIP*, Ch. 4, explains that it is necessary for the local authority to demonstrate that the information in the record is information with respect to a law enforcement matter to meet this part of the test.

[20] Page 80 of the *Guide to LA FOIP*, Ch. 4, further explains that section 14 of LA FOIP uses the word "could" versus "could reasonably be expected to" as seen in other provisions of LA FOIP. The threshold for could is somewhat lower than a reasonable expectation. The requirement for could is simply that the release of the information could have the specified result. There would still have to be a basis for asserting the harm could occur. If it is fanciful or exceedingly remote, the exemption should not be invoked. For this provision to apply there must be objective grounds for believing that disclosing the information could result in the harm alleged.

[21] Page 81 of the *Guide to LA FOIP*, Ch. 4, explains that "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.

[22] In its submission, RPS stated as follows:

... the type of call was removed from the record. Identifying the type of call for service in this situation could result in identifiable details about a law enforcement matter and or disclose information respecting a law enforcement matter that at this time RPS would like to protect...

[23] Upon review of the records, I note that pages 1, 4 and 5 contain notes made by three RPS' police officers during their investigation. These pages record the observations and communications that each of these three police officers had with individuals other than the Applicant. I note that, disclosure in this matter, could disclose information with respect to a lawful investigation. Therefore, the second part of the test is met.

[24] As such, I find that RPS properly applied subsection 14(1)(k) of LA FOIP to pages 1, 4 and 5 of the record. Accordingly, I recommend RPS continue to withhold this information pursuant to subsection 14(1)(k) of LA FOIP.

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

[25] RPS applied subsection 28(1) of LA FOIP to some portions of the record where I have found it properly applied subsection 14(1)(k) of LA FOIP. As such, I will only review the portions of the record where RPS applied subsection 28(1) of LA FOIP on its own, which are pages 3, 6, 7, and 8.

[26] Subsection 28(1) of LA FOIP provides:

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

[27] Section 28 of LA FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains, consents to its disclosure or if the disclosure without consent is authorized by one of the enumerated subsections of 28(2) or section 29 of LA FOIP (*Guide to LA FOIP*, Chapter 6, "Protection of Privacy", updated February 27, 2023 [*Guide to LA FOIP*, Ch. 6], pp. 161-164).

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

[29] In its submission to my office, RPS listed the following data elements regarding individuals, other than the Applicant, present in the pages where it applied subsection 28(1) of LA FOIP:

- Race
- Creed
- Name
- Date of birth
- Criminal History
- Address or Phone number
- Relates to health care service

[30] In its submission, RPS further explained the following:

The information in this file was directly related to [name of individual other than the Applicant] who was **not** the applicant. The applicant [name of the Applicant] was the homeowner of the house, which started on fire. Upon receiving the request for information from [name of the Applicant] our office considered whether the applicant had the right to access the information. The applicant provided a file number on the request and our office searched for the record. We noted that [name of the Applicant] was not added to the file as a person involved. The applicant was able to provide proof they owned the home on [property address]. Given they were able to provide proof of ownership to the property it was decided that they could have access to information relating to the property. Our office also considered that the applicant would know that the house was involved in a fire. We considered the absurd result of denying access to the applicant, so in turn we chose to provide information related to the house therefor [sic] meeting our duty to assist under Section 8 of *The Local Authority Freedom of Information Protection of Privacy Act*.

[31] Upon review of the record, my office noted that all these data elements were present in these pages and that the information regards individuals other than the Applicant. This would be the personal information of those other individuals as defined by subsections 23(1)(a), (c), (e), (k)(i) and (ii) of LA FOIP, which provide as follows:

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

(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;

...

(c) information that relates to health care that has been received by the individual or to the health history of the individual;

...

(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.

[32] I agree with RPS' conclusion that the record contains personal information of individuals other than the Applicant as found on pages 3, 6, 7, and 8. Therefore, I find that RPS properly applied subsection 28(1) of LA FOIP to the portions of the record on these pages, and recommend RPS continue to withhold the portions of these pages pursuant to subsection 28(1) of LA FOIP.

4. Did RPS properly apply subsection 13(2) of LA FOIP?

[33] RPS applied subsection 13(2) of LA FOIP to pages 9 to 17 of the record, in full. As stated by RPS, these pages contain a Fire Incident Report (Fire Report), which is dated August 6, 2023.

[34] Subsection 13(2) of LA FOIP provides:

13(2) A head may refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from another local authority or a similar body in another province or territory of Canada.

[35] Page 39 of the *Guide to LA FOIP*, Ch. 4, explains that subsection 13(2) of LA FOIP is a discretionary class-based exemption. The provision permits refusal of access to information in a record where the information was obtained in confidence, implicitly or explicitly from another local authority or a similar body in another province or territory of Canada.

[36] Pages 40 to 43 of the *Guide to LA FOIP*, Ch. 4, outline the following two-part test:

1. Was the information obtained from a local authority or a similar body in another province or territory of Canada?
2. Was the information obtained implicitly or explicitly in confidence?

1. Was the information obtained from a local authority or a similar body in another province or territory of Canada?

[37] Page 40 of the *Guide to LA FOIP*, Ch. 4, provides the following definitions:

- “Information” means facts or knowledge provided or learned as a result of research or study.
- “Obtained” means to acquire in any way; to get possession of; to procure; or to get a hold of by effort.

[38] In its submission to my office, RPS stated the following:

... RPS obtained a copy of the **Regina Fire Live RMS Field Incident Report** after a Regina Fire Employee sent a copy of the report to RPS for our records. Regina Police Service and Regina Fire responded to a fire at [property address] on August 6, 2023...

[39] Based on the review of the Fire Report, I note that these pages were provided to RPS by the City of Regina (City). The City qualifies as a “local authority” pursuant to subsection 2(1)(f)(i) of LA FOIP. As such, I am satisfied that the first part of the test is met.

2. Was the information obtained implicitly or explicitly in confidence?

[40] In its submission to my office, RPS stated the following:

...The aforementioned report was created by Regina Fire and used for their investigation. The report was provided to RPS under a presumption of confidentiality. Requests to access the report are more appropriately directed toward the City of Regina...

[41] As stated in RPS's submission above, it appears that RPS is asserting that the Fire Report was created by the City, and it was received by RPS "implicitly" in confidence. Pages 40 and 41 of the *Guide to LA FOIP*, Ch. 4, explain the following:

- "In confidence" usually describes a situation of mutual trust in which private matters are relayed or reported. Information obtained in confidence means that the provider 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 both local authorities at the time the information was obtained.
- "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.

[42] Pages 41 and 42 of the *Guide to LA FOIP*, Ch. 4, further lists that factors to consider when determining whether information was obtained 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 local authority?
- Was the information treated consistently in a manner that indicated a concern for its protection by the local authority from the point it was obtained 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?

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 obtained implicitly in confidence would not be sufficient.

- [43] Pages 41 and 42 of the *Guide to LA FOIP*, Ch. 4, also explain “mutual understanding” means that the local authorities both had the same understanding regarding the confidentiality of the information at the time it was provided. If one party intends the information to be kept confidential but the other does not, the information is not considered to have been obtained in confidence. However, mutual understanding alone is not sufficient. Additional factors must exist.
- [44] In its submission to my office, RPS did not provide any evidence that the “report was provided to RPS under a presumption of confidentiality,” or that there was mutual understanding of confidentiality between RPS and the City regarding the Fire Report. Such evidence might have included policies that stated as such, or reference to how such information was managed by RPS and the City in the past.
- [45] As stated previously, the Applicant is the homeowner. They stated they need these records for insurance purposes. Upon review, the Fire Report includes items such as incident number, the location, date and time of the incident, kind of property, response zone, date and time when the fire crew attended the location, some steps taken by the fire crew to remedy the fire, and areas within the house affected. It is not clear why the City would intend to keep this type of information confidential from the homeowner or on what basis, or why it would expect RPS to keep it confidential. I am not convinced, then, that confidentiality is implicit, and so the second part of the test is not met.
- [46] I find, that RPS did not properly apply subsection 13(2) of LA FOIP to pages 9 to 17 and recommend it release these pages to the Applicant, in full, within 30 days of issuance of this Report.

IV FINDINGS

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

[48] I find that RPS properly applied subsection 14(1)(k) of LA FOIP to the record.

[49] I find that RPS properly applied subsection 28(1) of LA FOIP to the record.

[50] I find that RPS did not properly apply subsection 13(2) of LA FOIP to the record.

V RECOMMENDATIONS

[51] I recommend that RPS continue to withhold parts of the record where it applied subsections 14(1)(k) and 28(1) of LA FOIP.

[52] I recommend that RPS release pages 9 to 17, in full, to the Applicant within 30 days of issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 20th day of February, 2024.

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