



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 251-2023

Town of Nipawin

June 7, 2024

Summary:

The Applicant submitted an access to information request to the Town of Nipawin (Town). The Town in its response withheld the record, in part, pursuant to subsections 14(1)(d), 15(1)(b)(i), 16(1)(a), (b), (d), 28(1) and sections 20, and 21 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant requested a review of the Town's decision. Upon review, the Commissioner found that the record at issue, a Code of Ethics Investigation Report (Investigation Report), should be released pursuant to subsection 117(1)(c) of *The Municipalities Act*. The Commissioner recommended the Town release the Investigation Report, but that it continue to withhold letters or acronyms used in place of staff members' names appearing throughout it .

I BACKGROUND

[1] On August 16, 2023, the Town of Nipawin (Town) received the following access to information request from the Applicant:

Please provide a full and complete copy of the report which was commissioned by council and submitted to council on or about July 10/2023.

This report was presented in response to the investigation of the Mayor of Nipawin in regards [sic] to an ethic violation and /or conduct.

The Head of the local authority has up to 30 days to respond to this request under LA FOIP.

- [2] On the same day, the Applicant requested a waiver of the payment of the application fees related to the request on the basis that the payment of this fee would cause them substantial financial hardship.
- [3] On August 30, 2023, the Town sent its section 7 decision letter to the Applicant indicating it was withholding portions of the record pursuant to subsections 14(1)(d), 15(1)(b)(i), 16(1)(a), (b), (d), 28(1) and sections 20, and 21 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Town also waived the \$20 application fee associated with the request.
- [4] In correspondence on October 13, 2023, my office received a request for review from the Applicant.
- [5] On December 7, 2023, my office sent notices of review to the Applicant and to the Town informing them that my office would be undertaking a review of the Town's decision to deny access to part of the record and invited both parties to provide their submissions on the matter. My office also requested from the Town a copy of the record and Index of Records.
- [6] In correspondence on December 11, 2023, the Applicant submitted their arguments regarding each of the exemptions applied.
- [7] On January 5, 2024, the Town provided my office with a copy of the record at issue and an Index of Records.
- [8] On February 2, 2024, the Town's lawyer, on behalf of the Town, provided a submission to my office.

II RECORDS AT ISSUE

[9] The record at issue is a 44-page Code of Ethics Investigation Report (Investigation Report). The Town released 11 pages of this Investigation Report in full and withheld 33 pages in whole or in part.

[10] The Town, in its submission to my office withdrew its reliance on subsections 14(1)(d) and 16(1)(d) of LA FOIP as a basis of withholding parts of the record. Further, the Town during the review, raised subsections 22(1)(a), (c) and 22(2) of LA FOIP. The Town also specified that it was also relying specifically on subsection 21(a) of LA FOIP when it had only previously mentioned all of section 21 in its section 7 decision.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

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

2. Does section 117 of *The Municipalities Act* apply?

[12] LA FOIP provides as follows:

4 This Act:

(a) **complements** and **does not replace** existing procedures for access to information or records in the possession or under the control of a local authority;

(b) **does not in any way limit access to the type of information or records that is normally available to the public;**

[Emphasis added]

[13] It should be noted that LA FOIP is intended to compliment and not replace procedures to provide information and does not limit access to the type of information that is normally available to the public.

[14] Of particular relevance to the current review is [Review Report 122-2014](#), where my office provided the following comments regarding records available to the public pursuant to subsection 117(1) of *The Municipalities Act*:

[19] Virtually all documents in the possession or control of a local authority could be said to be public records... There is a statutory provision assuring public access to contracts once approved by council pursuant to subsection 117(1)(a) of *The Municipalities Act*. The Village has also already approved having the contract available to the public for viewing.

[21] If subsections 18(1)(c)(ii) or (iii) could be relied on by the Village than it would be preventing access to information in records that are normally available to the public pursuant to subsection 117(1)(a) of *The Municipalities Act* which would be contrary to subsection 4(b) of LA FOIP.

[23] **In conclusion, I find that the Village cannot rely on subsections 18(1)(c)(ii) and (iii) of LA FOIP to withhold the record as this information is already made available to the public pursuant to subsection 117(1)(a) of *The Municipalities Act*.**

[Emphasis added]

[15] The Town is governed and operates under *The Municipalities Act*, which provides as follows:

117(1) Any person is entitled at any time during regular business hours to inspect and obtain copies of:

...

(c) **any report** of any consultant engaged by or of any employee of the municipality, or of any committee or other body established by a council, after the report has been submitted to the council, except any opinion or report of a lawyer;

...

(2) Within a reasonable time after receiving a request, the administrator shall furnish the copies requested on payment of any fee that the council may fix.

[Emphasis added]

[16] The Investigation Report here is a report. Consultant is a broad term and certainly can include a person engaged to do an investigation, have findings and make recommendations.

[17] The Town in describing the Investigation Report stated:

...the Applicant seeks access to a complete copy of a code of ethics investigation report that was provided to the Town by Bloom Centre for Municipal Education (“**Bloom**”). Bloom is a contracted consultant of the Town that provided the investigation report to the Town on July 10, 2023 (the “**Bloom Report**”). The Bloom Report was provided to the Town pursuant to Resolution No. 2023-277 carried at the May 23, 2023, Regular Meeting of Council, which engaged Bloom to conduct a public investigation in relation to mayoral conduct.

[Emphasis in original]

[18] It appears from a review of the facts and the Town’s submission that the Investigation Report qualifies as “any report of any consultant engaged by or of any employee of the municipality... after the report has been submitted to the council”.

[19] Subsection 117(1)(c) of *The Municipalities Act* excludes any opinion of a lawyer from having to be inspected or copied.

[20] The Town explained in its submission to my office that it has not itself claimed subsection 21(a) of LA FOIP as nothing in the Investigation Report discusses legal advice that was given to the Town. Rather, the Town asserts that it is seeking to protect the privilege due the mayor as this matter resulted in them engaging legal counsel in May 2023 while the ethics investigation and potential disciplinary proceedings were taking place.

[21] The Town further asserted that (severances 2, 4 and 6) on page 10 and (severance 1) on page 36, indicate that the mayor had retained legal counsel which is a fact not necessarily known to the public and should be subject to the privilege.

[22] My analysis reveals that none of the information withheld qualifies as a communication between a solicitor for the Town and the Town as the client. The solicitor in question was the solicitor for the mayor, not the Town. Subsection 117(1)(c) of *The Municipalities Act*

would only apply if the opinion was an opinion of a solicitor who was representing the Town. Other parties such as the mayor can engage solicitors to represent them and communicate with the Town, but those are not opinions that would be covered by subsection 117(1)(c). Therefore, I find that the Investigation Report does not include any opinion of a lawyer representing the Town and should be released.

3. Did the Town properly apply subsections 15(1)(b)(i), 16(1)(a), (b), 21(a), 22(1)(a), (c), 22(2) and 28(1) and section 20 of LA FOIP?

[23] Based on the above conclusion and the application of subsection 117(1)(c) of *The Municipalities Act*, I find that subsections 15(1)(b)(i), 16(1)(a), (b), 21(a), 22(1)(a), (c), 22(2) and 28(1) and section 20 of LA FOIP have no application in this review.

4. Did the Town properly apply subsection 28(1) of LA FOIP?

[24] The Town applied subsection 28(1) of LA FOIP to some severances on pages 3, 8, 9, 10, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41 of the record.

[25] 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.

[26] As I already indicated above, the Investigation Report should be released. Nonetheless, the Applicant indicated:

... It can be determined that there were many other individual witnesses who gave statements and evidence specific to the individual being investigated... Their statements and evidence should be public. **This can be done so without identifying them specifically. Identifiers such as name and employment position can be hidden.** It is the substance of the statements that is important not their identities. The statements given by members of council are another matter. These are publicly elected individuals who have a fiduciary responsibility to maintain decorum and ethical standards. The statements and evidence taken from these councillors must be public by

the mere fact they are elected by the public. Secondly their anonymity should not be considered because of their fiduciary responsibilities as well as the report's conclusion of their failures to ensure ethical standards were maintained by all elected officials.

[Emphasis added]

[27] I note that the Investigation Report does not disclose the identities of the councillors interviewed. The report only provides a consolidated summary of their responses.

[28] I note, however, that letters of the alphabet or acronyms are associated with the identities of the staff members throughout the Investigation Report. Since the Applicant has stated that they are not interested in the identities of these persons, the statements of these staff members could be further de-identified. I recommend the Investigation Report be released, within 30 days of receipt of this Report, but the letters or acronyms used in place of staff members' names appearing throughout it should continue to be withheld.

IV FINDINGS

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

[30] I find that the Investigation Report does not include any opinion of a lawyer representing the Town and should be released.

[31] I find that subsections 15(1)(b)(i), 16(1)(a), (b), 21(a), 22(1)(a), (c), 22(2) and 28(1) and section 20 of LA FOIP do not apply to the Investigation Report.

V RECOMMENDATION

[32] I recommend that the Town release the Investigation Report within 30 days of receipt of this Report, but that it continue to withhold the letters or acronyms used in place of staff members' names appearing throughout it.

Dated at Regina, in the Province of Saskatchewan, this 7th day of June, 2024.

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