



REVIEW REPORT 253-2022

Town of Langham

May 31, 2023

Summary: The Applicant made an access to information request to the Town of Langham (Town). The Applicant was not satisfied with Town's response and requested a review by the Commissioner. The Commissioner found the Town did not properly apply subsection 16(1)(b) of LA FOIP to the record and recommended it fully release the emails to the Applicant within 30 days of issuance of this report.

I BACKGROUND

[1] The Town of Langham (Town) received the Applicant's access to information request on November 2, 2022, which stated in part as follows:

unaltered and non-redacted copies of the emails that have been raised by councilor [name redacted] regarding communications between the previous acting CAO, [name redacted], and the then Acting CAO [name redacted] was directed to misfile an invoice, the [name redacted] then responded with concern about not misfiling said invoice that Councilor [name redacted] allegedly responded indicating to simply not pay it at the moment.

To be completely clear – I am not requesting emails sent earlier or emails sent after – only the emails that have been publicly discussed and quoted in the meetings under public record (discussion suggests this consists of 3 emails, councilor [name redacted] can likely confirm the exact number as [they] raised the concerns....

To be clear, this is all information that has been discussed in public meetings and as such is a matter of public record.

[2] In its December 19, 2022 decision letter, the Town responded to the request, which in part, advised:

...Section 3(1)(b) of LAFOIP [*The Local Authority Freedom of Information and Protection of Privacy Act*] states that LAFOIP does not apply to “material that is a matter of public record”.

To the extent that this information was made available in a public meeting and is, as you say, “a matter of public record”, it is not subject to LAFOIP pursuant to section 3(1)(b).

In the event the emails are not a matter of public record, your Request is refused on the basis of section 16(1)(b) of LAFOIP. The documents contained in your request consist of consultations or deliberations involving officers and employees of the Town.

The emails also contain personal information of third parties that cannot be disclosed under section 28(1) of LAFOIP.

[3] By email on December 20, 2022, the Applicant confirmed with my office that they wished to have a review of the Town’s reliance on subsections 16(1)(b) and 28(1) of LA FOIP and the Town’s assertion that a portion of the record was a matter of public record pursuant to subsection 3(1)(b) of LA FOIP.

[4] On December 30, 2022, my office notified the Town and the Applicant that it would be undertaking a review and invited both parties to make a submission. The Town provided my office with its submission on February 28, 2023. The Applicant provided my office with a submission on January 5, 2023.

II RECORDS AT ISSUE

[5] There are three emails totalling two pages at issue in this review that the Town withheld in full. In its submission, the Town advised it was now only relying on subsection 16(1)(b) of LA FOIP. The Town’s submission stated, in part:

The Town now wishes to rely solely on section 16(1)(b) of LAFOIP in support of the Mayor’s refusal to provide access to the records. The Town’s reference to the records being a “matter of public record” was simply intended to highlight to the Applicant that “matters of public record” are not subject to LAFOIP. The Town does not view the 3 emails in question as a matter of public record as suggested by the Applicant. The Town also recognizes that the information previously viewed as personal information is likely not in fact personal information.

[6] Therefore, I will only consider if subsection 16(1)(b) of LA FOIP applies to the record.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[7] The Town is a “local authority” pursuant to subsection 2(1)(f)(i) of LA FOIP. Therefore, I find I have jurisdiction to undertake this review.

2. Does subsection 16(1)(b) of LA FOIP apply to the record?

[8] The Town has fully applied subsection 16(1)(b) of LA FOIP to the three emails that are responsive to the Applicant’s request.

[9] Subsection 16(1)(b) of LA FOIP provides:

16(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) consultations or deliberations involving officers or employees of the local authority;

[10] Subsection 16(1)(b) 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 consultations or deliberations involving officers or employees of a local authority (*Guide to LA FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 29, 2021, [*Guide to LA FOIP*, Ch. 4], at p. 112).

[11] The provision is intended to allow persons having the responsibility to make decisions to freely discuss the issues before them in order to arrive at well-reasoned decisions. The intent is to allow such persons to address an issue without fear of being wrong, looking bad, or appearing foolish if their frank deliberations were to be made public (*Guide to LA FOIP*, Ch. 4, p. 112).

[12] To determine if subsection 16(1)(b) of LA FOIP applies to the record, the following two-part test must be met:

1. Does the record contain consultations or deliberations?
2. Do the consultations or deliberations involve officers or employees of the local authority?

(Guide to LA FOIP, Ch. 4, pp. 113-114)

[13] I will now consider each part of the test.

1. Does the record contain consultations or deliberations?

[14] In its submission, the Town asserts that the emails, "...fit squarely within the definitions of "consultation" and "deliberation" adopted by the Commissioner."

[15] "Consultation" means:

- the action of consulting or taking counsel together; deliberation, conference;
- a conference in which the parties consult and deliberate.

(Guide to LA FOIP, Ch. 4, p. 113)

[16] A consultation can occur when the views of one or more officers or employees of a local authority are sought as to the appropriateness of a particular proposal or suggested action. It can include consultations about prospective future actions and outcomes in response to a developing situation. It can also include past courses of action. For example, where an employer is considering what to do with an employee in the future, what has been done in the past can be summarized and would qualify as part of the consultation or deliberation *(Guide to LA FOIP, Ch. 4, p. 113)*.

[17] "Deliberation" means:

- the action of deliberating (to deliberate: to weigh in mind; to consider carefully with a view to a decision; to think over); careful consideration with a view to a decision;
- the consideration and discussions of the reasons for and against a measure by a number of councillors.

(Guide to LA FOIP, Ch. 4, p. 113)

[18] A deliberation can occur when there is a discussion or consideration of the reasons for or against an action. It can refer to discussions conducted with a view towards making a decision *(Guide to LA FOIP, Ch. 4, p. 114)*.

[19] In its submission, the Town asserts the following, in part, as it relates to the first email:

... [sender] recommends a course of action to [recipient]. [Sender] then asks [recipient] [a question] to ensure [recipient] understanding and agreement.

[20] Regarding the second email, the sender is seeking guidance, providing their opinion on a few matters, suggesting a course of action that the sender will or will not take and is seeking clarification of the meaning of a term.

[21] Regarding the third email, the sender is advising on a proposed course of action, providing opinions, and offering an opinion on what the outcome may be.

[22] From a review of the three emails, a course of action and how to achieve it are being suggested. There is also a statement that the suggested course of action will or will not be taken. Without asking the views of the individual who can take the course of action does not constitute a consultation or a deliberation for the purposes of this provision.

[23] The emails also contain clarification as to what a specific term in one of the emails means. Clarification of a term is simply asking more for more information so it is understood what is meant by the term. It would be akin to a student looking up a term in the dictionary, not understanding what that term means and asking their teacher to elaborate so the term can be understood by the student. That does not constitute a consultation or deliberation.

[24] Therefore, the first part of the test has not been met and I do not need to consider the second part. As the first part of the test has not been met, I find the Town did not properly apply subsection 16(1)(b) of LA FOIP to the record. As such, I recommend the Town fully disclose the emails to the Applicant within 30 days of issuance of this report.

IV FINDINGS

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

[26] I find the Town did not properly apply subsection 16(1)(b) of LA FOIP to the record.

V RECOMMENDATION

[27] I recommend the Town fully disclose the emails to the Applicant within 30 days of issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 31st day of May, 2023.

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