



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## REVIEW REPORT 259-2024

### Town of Birch Hills

June 17, 2025

#### Summary:

The Applicant requested information from the Town of Birch Hills (Town) under an “informal” access to information process as required by the Town’s policy. The Applicant subsequently made a formal access to information request to the Town pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The formal application asked for information under six different segments. The Town issued a section 7 decision denying access to some records pursuant to section 28(1) of LA FOIP. It also stated that it did not have any records responsive to the other parts of the request. The Applicant requested a review by the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) of the Town’s decision to withhold information and its search for records. During the review, the Town issued multiple section 7 decisions. It released portions of two records that were responsive to Part 1 of the request and withheld other portions pursuant to section 28(1) of LA FOIP. It released a record in full that was responsive to Part 2 of the request. The Town continued to claim that the records responsive to Parts 3 to 6 of the request did not exist.

The Commissioner found that the Town properly applied section 28(1) of LA FOIP to some information within the records relating to Part 1 of the access request but not all. She made other findings, such as: the Town’s section 7 decisions did not comply with LA FOIP, the Town did not conduct a reasonable search, and the Town did not comply with its duty to assist. The Commissioner recommended that the Town, within 30 days of issuance of this Report, release some of the responsive information to the Applicant but not all. She also recommended that it conduct another search for responsive records and that the Town review and revise its policies and procedures for processing access to information requests to ensure compliance with LA FOIP within 30 days of issuance of this Report.

## **I BACKGROUND**

- [1] The Applicant made a request for information to the Town of Birch Hills (Town) by email on September 20, 2024. The Applicant wrote:

I am looking to get a copy of the SaskWater feasibility report that was submitted to the Town around 2018 that gave several options including an Aquifer and running a line from the river.

I am also requesting a copy of the SaskWater report that was submitted to Town council in approximately June 2022 as well as a copy of the closing letter sent from the Town to SaskWater referred to in August 17 2022 minutes item 5.6.

I'm not certain as to whether these are available upon request or if it requires an LAFOIP. When I asked several months ago SaskWater checked with the Town and Shauna McClinton responded that they were told to direct me back to you.

Please let me know if anything further is required on my part. If not, I will try make arrangements to have them picked up next week or if it is possible to have them emailed - that would be good as well.

- [2] The Applicant had not received a response from the Town by October 4, 2024. According to the Town's "Informal Access Request Form", a \$5 fee was to be paid by applicants to the Town in order for records to be sent by regular mail. The form provided:

### **Printing, Photocopying and Other Fees**

There will be a cost of \$0.25 per page plus GST, for photocopies or computer print outs. Any documents protected by copyright, will not be provided.

Costs for provided information will be: Regular Mail - \$5.00; Registered Mail - \$11.00; Courier- Actual Cost; E-mail - No Charge.

I have read and understood the aforementioned conditions and that prior to receiving access to the records that I have requested; I am required to pay the fee.

- [3] Accordingly, the Applicant emailed the Town subsequently and indicated that they had already e-transferred the \$5 fee. The Applicant stated:

On September 20 I emailed a request for information. Hearing no response I will assume that the information requested requires an Informal Information Request which is attached - I have e transferred the \$5 fee.

I have been verbally informed a couple times by office staff that the 2022 SaskWater report has been returned to SaskWater and the Town no longer has a copy. Could I please get written confirmation of this? My understanding is that once reports are accepted into minutes they become a permanent part of the municipal records.

I appreciate your attention to this request, please let me know if additional information or funds are needed to process this request.

- [4] The Applicant attached a completed “Informal Access Request Form” to his email. The Applicant recorded their name on the form along with their address and the following six-part description of the records to which they sought access:

Copy of Building Permit for Bunkhouse referred to in April 11, 2018 Minutes – Resolution #18-087 – including site plan and properly location

Copy of Catterall and Wright engineering proposal (C & W report) referred to in Feb 13, 2019 Minutes Resolution #19-042

Copy of SaskWater report also referred to in February 13, 2019 Minutes under 8. Old Business 8.1 outlining multiple SaskWater options

Copy of SaskWater Additional Proposal referred to in March 27, 2019 Minutes Under 8.1

Copy of any historic information in the SaskWater file pertaining to proposals or invitations from SaskWater to Birch Hills to provide service from late 1980's to present.

Copy of closing letters/correspondence to/from SaskWater referred to in July 2022 Minutes 7.2.2; August 17, 2022 Minutes 5.6; and October 26, 2022 Minutes 10.2

- [5] The Town responded to the Applicant with a letter dated October 8, 2024. OIPC has organized the Town's response to each aspect of the Applicant's access request in the table below:

Part	Applicant's Access Request	Town's Response
1	Copy of Building Permit for Bunkhouse referred to in April 11, 2018 Minutes – Resolution #18-087 – including site plan and properly location	<p>What is the purpose of you acquiring this information?</p> <p>The application you submitted stated you are requesting a copy of a Building Permit for a "Bunkhouse" referred to in the April 11, 2018 minutes, however the information you are requesting is personal information about someone other than yourself (attach proof that you have authority to receive the information requested). Your application did not include permission from the Resident. Consequently, your request is denied, therefore you may wish to contact this individual for this information.</p>
2	Copy of Catterall and Wright engineering proposal (C & W report) referred to in Feb 13, 2019 Minutes Resolution #19-042	no public attachment to this resolution - resolution printed for your review
3	Copy of SaskWater report also referred to in February 13, 2019 Minutes under 8. Old Business 8.1 outlining multiple SaskWater options	no public attachment - request is the same as the one above
4	Copy of SaskWater Additional Proposal referred to in March 27, 2019 Minutes Under 8.1	no public attachment - no resolution - only discussion that took place
5	Copy of any historic information in the SaskWater file pertaining to proposals or invitations from SaskWater to Birch Hills to provide service from late 1980's to present	<p>what is the purpose of requesting this information?</p> <p>There will be extra charges for this and will be done when it can be done.</p>
6	Copy of closing letters/correspondence to/from SaskWater referred to in July 2022 Minutes 7.2.2; August 17, 2022 Minutes 5.6; and October 26, 2022 Minutes 10.2	no public attachment to give...SaskWater letter printed for you review...Confidential report sent back to originator - Resolution 91-993- printed for your review.

[6] On October 9, 2024, the Applicant sent a lengthy email to the Town explaining their purpose for requesting access to the requested records.

[7] On October 28, 2024, the Applicant sent another email to the Town saying:

I am just following up on the attached request. It's nearing 3 weeks with no reply. Will I be receiving the information requested and if so, what will the timeline be?

[8] **First Section 7 Response Notice:** On November 4, 2024, the Town provided the Applicant with its first section 7 LA FOIP response notice by letter. The Town denied the Applicant access to Part 1 of the Applicant's access request pursuant to section 28(1) of LA FOIP. Further, the Town indicated it had no records relating to Parts 3 to 6 of the Applicant's access request. The Town wrote a letter to the Applicant declaring the following:

This letter is to advise you that the information you requested in your last Access to Information Request Form received on October 9, 2024 is personal information. Section 28(1) of the *Local Authority Freedom of Information and Privacy Act* prevents the Town from sharing personal information and reads as follows:

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

The application you submitted stated you are requesting *general information*, however the information you are requesting is *personal information about someone other than yourself (attach proof that you have authority to receive the information requested)*. Your application did not include permissions from the two individuals. Consequently, your request is denied, therefore you may wish to contact these individuals for this information.

As you have been previously told on multiple occasions, the Town does not have reports to give you regarding SaskWater.

If you would like to exercise your right to request a review of this decision, you may do so by making application to the commissioner for a review of the matter.

- [9] The Town did not include a response to Part 2 of the Applicant's request in the response notice of November 4, 2024.
- [10] On November 6, 2024, the Applicant requested a review with the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) with respect to the Town's first section 7 response notice dated November 4, 2024.
- [11] On November 19, 2024, the Applicant clarified with OIPC that they also disputed the reasonableness of the Town's search for records pursuant to section 5.1 of LA FOIP.
- [12] **Second Section 7 Response Notice:** On December 9, 2024, the Town sent a second section 7 response notice to the Applicant by letter. The Town wrote:

While overlooking your Informal Access Request Form that was received via email on October 4, 2024 for a copy of a Third Party 2018 building permit and copies of SaskWater reports, it was determined that additional exemptions apply to your original request for information. The following sections from *The Local Authority Freedom of Information and Protection of Privacy Act* apply:

Section 28(1) states:

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

Section 23(1)(j) states:

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

*..... (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.*

Section 7(2)(e) states:

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

..... (e) stating that access is refused for the reason that the record does not exist.

Also, the third-party individual was contacted at the time of your request for information, and the consensus was to withhold the information pertaining to the building permit application. However, the Town's initial letter of denial suggested you could contact this individual for the said information.

[13] The Applicant confirmed to OIPC by email on December 12, 2024 that they still wished a review of the Town's refusal to provide access to Part 1 of the access request. The Applicant further indicated that they wished a review of the Town's efforts to locate all records responsive to the Applicant's access request.

[14] On December 17, 2024, OIPC notified both the Town and the Applicant that the review would proceed.

[15] On January 15, 2025, the Town provided OIPC with the following Index of Records (Index):<sup>1</sup>

Page No.	Severance No.	Exemption(s) Applied	Description (i.e. email, report, slide deck)
	1	27 & 33(1)	Copy of Building Permit- no written consent was given by the third-party
	2	7(2)(e)	Copy of Catteral & Wright proposal from the Feb 2019 Resolution #19-042- more information is required from the applicant in order to pinpoint the requested proposal
	3 & 4	7(2)(e) & 16(1)	Copy of the 2019 SaskWater proposal referenced in February

---

<sup>1</sup> Even though the table provided for a column of page numbers, no page numbers were furnished by the Town, so that column is empty. This table is reproduced exactly as it was provided to OIPC.

			and again in March of 2019- Resolution of Council was made to return the confidential proposals back to SaskWater. The Town is not in possession of these proposals. Per the recommendation of our solicitor, an added exemption was applied
	5	7(2)(e)	Historic information in the SaskWater file from the 1980's to present - unsure of what file [they are] referring to as this file cannot be located - files are kept in computer and in storage room.
	6		Copies of closing letters/correspondence as requested was printed for her review.

- [16] The Town's Index of Records, directed to this office only, notes that it relied on sections 7(2)(e), 16(1), 27 and 33(1) of LA FOIP as statutory exemptions to justify its refusal to allow the Applicant access to the records sought. Of the exemptive sections listed by the Town, the only real exemption is section 16(1) of LA FOIP and this is a discretionary provision. The Town lists other provisions of LA FOIP that are not legitimate statutory exemptions. Section 7(2)(e) states a fact – that the record does not exist – this is not a statutory exemption, and it is provided for under Part II of LA FOIP while the exemptions are listed in Part III of that legislation. Section 27 provides that a local authority may not use personal information under its control without consent of the individual to whom the information relates – it is not a statutory exemption, and it is provided for in Part IV of LA FOIP. Finally, section 33(1) outlines the form of notice that a local head must give to a third party when access is to be made of a record that may involve the third party – this is not a statutory exemption and is provided for in Part V of LA FOIP.



- [17] On January 15, 2025, the Town provided OIPC with its written submission.
- [18] In February 2025, OIPC made additional attempts at an early resolution of the issues in this matter that were unsuccessful.
- [19] **Third Section 7 Response Notice:** On March 20, 2025, the Town sent an email to the Applicant. Attached to the email was the Town's third section 7 response notice to the Applicant. This notice was in the form of a letter that provided:

While overlooking your Informal Access Request Form that was received via email on October 4, 2024, regarding the 2018 building permit requested, it was determined that additional exemptions apply to your original request for information. The following sections from *The Local Authority Freedom of Information and Protection of Privacy Act* apply:

*7(1) Where an application is made pursuant to this Act for access to a record, the head of the local authority to which the application is made shall:*

*(a) consider the application and give written notice to the applicant of the head's decision with respect to the application in accordance with subsection (2);*

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

*(a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;*

These documents are readily available for you to pick up at the Town Office located at 126 McCallum Avenue between the hours of 9:00 am to 12:00 pm and 1 :00 pm to 4:00 pm. The cost for the documents is \$1 .25 plus tax. If you would like to exercise your right to request a review of this decision, you may do so by making application to the commissioner for a review of the matter.

- [20] Meanwhile, OIPC continued to work with the Town and the Applicant in an effort to arrive at an early resolution to this matter.
- [21] **Fourth Section 7 Response Notice:** On March 31, 2025, the Town mailed a fourth section 7 response notice to the Applicant, where it advised the Applicant it was providing the Applicant with portions of the building permit according to Part 1 of the Applicant's access

request, including the name of the project and the name of the permit holder. The letter provided:

Thank you for your access to information request received by our office on October 4, 2024 via email where you requested a copy of a building permit for a bunk house referred to in the April 11, 2018 minutes, being resolution #19-042.

This letter is a notice pursuant to subsection 7(2)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act*. Specifically, this letter is to advise you that we identified nine (9) pages of records responsive to your access request.

We are granting access to three (3) pages in full and we are granting six (6) pages in part. Pursuant to Section 28(1), we are withholding portions of the records as these portions are the personal information of a third -party individual.

Section 28(1) states:

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

Section 33(1)

*33(1) Where a head intends to give access to a record that the head has reason to believe may contain:*

*(a) Information described in in subsection 18(1) that affects the interest of a third party;*

*33(2) The notice mentioned in subsection (1)*

*(b) the head intends to give access to the record or to part of it;*

*7(1) Where an application is made pursuant to this Act for access to a record, the head of the local authority to which the application is made shall:*

*(a) consider the application and give written notice to the applicant of the head's decision with respect to the application in accordance with subsection (2);*

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

*(a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;*

These documents are readily available for you to pick up at the Town Office located at 126 McCallum Avenue between the hours of 9:00 am to 12:00 pm and 1:00 pm to 4:00 pm. The cost for the documents is \$2.25 plus tax. If you would like to exercise your right to request a review of this decision, you may do so by making application to the commissioner for a review of the matter.

[22] On March 31, 2025, the Applicant sent OIPC copies of excerpts from meeting minutes of Town council meetings in 2017 where the names of the permit holder of building permit were revealed. The purpose was to show the Applicant that the Town had disclosed names of permit holders in the past, but no longer revealed this information.

[23] **Fifth Section 7 Response Notice:** On April 3, 2025, the Town sent a fifth section 7 response notice to the Applicant by mail. It said:

Thank you for your access to information request received by our office on October 4, 2024 via email where you requested a copy of a building permit for a bunk house referred to in the April 11, 2018 minutes, being resolution #19-042 and a copy of the Catteral & Wright report referred to in February 13, 2019 minutes, being resolution #19-042.

This letter is a notice pursuant to subsection 7(2)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act*. Specifically, this letter is to advise you that we identified nine (16) pages of records responsive to your access request.

We are granting access to ten (10) pages in full and we are granting six (6) pages in part. Pursuant to Section 28(1), we are withholding portions of the records as these portions are the personal information of a third-party individual.

Section 28(1) states:

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

Section 33(1)

*33(1) Where a head intends to give access to a record that the head has reason to believe may contain:*

*(a) Information described in in subsection 18(1) that affects the interest of a third party;*

*33(2) The notice mentioned in subsection (1)*

*(b) the head intends to give access to the record or to part of it;*

*7(1) Where an application is made pursuant to this Act for access to a record, the head of the local authority to which the application is made shall:*

*(a) consider the application and give written notice to the applicant of the head's decision with respect to the application in accordance with subsection (2);*

*(2) The head shall give written notice to the applicant within 30 days after the (a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;*

These documents are readily available for you to pick up at the Town Office located at 126 McCallum Avenue between the hours of 9:00 am to 12:00 pm and 1:00 pm to 4:00 pm. On March 31, 2025, you were provided with some of the documents, therefore the cost of the remaining documents is \$1.75 plus tax. If you would like to exercise your right to request a review of this decision, you may do so by making application to the commissioner for a review of the matter.

[24] On May 29, 2025, the Applicant confirmed by email that they received the C & W report from the Town and that they were satisfied with this response. Therefore, Part 2 of the Applicant's access request was no longer an issue in this review.

[25] While the Applicant was very responsive to OIPC questions during the course of the review, they did not provide a written submission. As indicated in paragraph [17] above, the Town provided OIPC with its written submission on January 15, 2025.

## **II RECORDS AT ISSUE**

[26] Before outlining the records at issue in this review, it is necessary to consider the Town's decision to raise additional discretionary exemptions after it issued its initial section 7 notice. The Town originally cited section 28(1) of LA FOIP as its main reason for denying access to records in its first section 7 response notice. It subsequently issued additional decisions. All told, the Applicant was given the following reasons for the withholding of Town records:

Section 7 Response Notice to Applicant	Date	Town's Reason for Withholding
First	November 4, 2024	<ul style="list-style-type: none"> <li>• s.28(1) LA FOIP</li> <li>• No records exist for SaskWater</li> </ul>
Second	December 9, 2024	<ul style="list-style-type: none"> <li>• s.28(1) LA FOIP</li> <li>• s.23(1)(j) LA FOIP</li> <li>• s.7(2)(e) LA FOIP</li> <li>• Third Party information</li> </ul>
Third	March 20, 2025	<ul style="list-style-type: none"> <li>• “additional exemptions”</li> </ul>
Fourth	March 31, 2025	<ul style="list-style-type: none"> <li>• s.28(1) LA FOIP</li> <li>• s.33(1) and (2) LA FOIP</li> </ul>
Fifth	April 3, 2025	<ul style="list-style-type: none"> <li>• s.28(1) LA FOIP</li> <li>• s.33(1) and (2) LA FOIP</li> </ul>

[27] As explained above in paragraph [16], the only true exemption raised by the Town was contained within the Index of Records. The Index was shared with OIPC only and it was not once raised with the Applicant. The Index of Records indicated that the records requested in Part 3 and Part 4 could not be supplied because of section 16(1) of LA FOIP. Since section 16(1) of LA FOIP is the only true exemption raised by the Town, it must be addressed head on. Subsection 2-4(3) of the OIPC's [Rules of Procedure](#) provides that OIPC will not consider any discretionary exemptions not originally raised in the head's section 7 response notice. That rule provides:

**2-4(3)** The notice of review will indicate that the public body should in its representation (submission) address every exemption claimed in the head's decision. Discretionary exemptions, not included in the head's decision under FOIP/LA FOIP, will not be considered by the commissioner's office unless there are exceptional circumstances.

[Emphasis added]

[28] To be clear, the Applicant was never informed by the Town in a section 7 response notice that it intended to invoke the section 16 discretionary exemption in this matter. As such,

there will be a finding that section 16 was not properly raised in the section 7 response notices, and this improperly raised claim of exemption can have no application in the analysis of this matter.

[29] The Town also quoted sections 33(1) and (2) of LA FOIP in its fourth and fifth section 7 response notices to the Applicant. The Town gave no explanation as to how these provisions might apply to either the Applicant or to this office. Sections 33(1) and (2) of LA FOIP are not exemptions. Section 33 outlines that content of notice that a head may wish to provide to a third party when it intends to give access to a record that may contain certain information that might affect the interest of the third party. Because OIPC cannot draw a direct link between the invocation of this section and a refusal to provide the Applicant with an access request, this section can play no part in the analysis of this matter either.

[30] On February 18, 2025, the Town provided OIPC with a redacted version of the *building permit application* for the purposes of the OIPC's review. This is the item that formed the basis of Part 1 of the Applicant's request of the town. Within the building permit application, the Town redacted the following data elements pursuant to section 28(1) of LA FOIP:

- Building owner's name,
- Building owner's phone number,
- Building owner's address,
- Building owner's postal code,
- Building owner's e-mail address,
- General Contractor,
- Civic address of property,
- Value of construction,
- Owner's signature,

- Names of sub-contractors and insurers.

[31] On April 1, 2025, the Town provided the OIPC with a redacted version of the *building permit* for the purposes of the OIPC’s review. Within the building permit, the Town redacted the following data elements pursuant to section 28(1) of LA FOIP:

- Project name,
- Name of Permit Holder,
- File Number,
- Civic Address of property.

[32] The Town did not provide OIPC with any other records pursuant to the Applicant’s access request because it claimed that it either did not have possession or control of the records responsive to Parts 3 to 6 of the Applicant’s access request, or because the records did not exist at all.

### **III DISCUSSION OF THE ISSUES**

#### **1. Does the OIPC have jurisdiction?**

[33] The Town qualifies a “local authority” as defined in subsection 2(1)(f)(i) of LA FOIP. The OIPC has jurisdiction to conduct this review.

#### **2. Did the Town exceed its jurisdiction by requiring its citizens to file “informal” access to information requests?**

[34] At the time of the request, the Town had a “Freedom of Information and Access to Information Policy.” The policy delegated the role of “head” pursuant to the definitions in section 2 of LA FOIP to the Chief Administrative Officer (CAO) for the Town.

- [35] The policy mandated a precondition to the filing of an access to information request under LA FOIP. That precondition instructed applicants to make an *informal* access to information request. The policy stated:

**Denied Access to Informal request**

If an applicant has been denied an informal access to information, the applicant may formally apply to the Town's CAO with a Formal Access request.

...

**Formal Access to information requests**

1. If an applicant has been denied access to an Informal access to information, the applicant can then proceed by completing a Formal Access Information Request which would be directed to the CAO if they choose.

- [36] OIPC's notice of review asked the Town to explain if it requested individuals to file an *informal* information request on every occasion and to state the authority for this policy. The Town's response was that the policy would be revised in the future so that individuals seeking access to information from the Town will do so only pursuant to LA FOIP.
- [37] Local authorities may provide access to information and records through other means such as routine disclosures in response to inquiries and requests for information and through active dissemination of information<sup>2</sup>. Other statutes in Saskatchewan, such as section 117 of *The Municipalities Act*<sup>3</sup>, provide for the dissemination of information outside of the formal regime as prescribed in LA FOIP. The OIPC is a strong proponent of these transparency mechanisms because making information available outside the LA FOIP process can promote cost-effective and efficient management of public information resources<sup>4</sup>.

---

<sup>2</sup> OIPC [Guide to LA FOIP, Chapter 3, "Access to Records,"](#) updated May 5, 2023 [*Guide to LA FOIP*, Ch. 3], at pages 189 to 190.

<sup>3</sup> *The Municipalities Act*, Statutes of Saskatchewan, 2005, c. M-36.1, as amended. Section 117 outlines the procedure for members of the public to inspect and obtain copies of a long list of municipal documents.

<sup>4</sup> OIPC [Guide to LA FOIP, Chapter 2, "Administration of LA FOIP,"](#) updated March 2, 2023 [*Guide to LA FOIP*, Ch. 2] at page 14).



[38] LA FOIP grants an open-ended or unqualified right of access to public information of which local authorities are only the stewards, unless it is found that the listed exemptions properly apply or the access to information request should be disregarded pursuant to section 43.1 of LA FOIP.<sup>5</sup>

[39] There is a finding that the Town had no authority to require an “informal” access request of its citizens prior to the filing of a formal request under LA FOIP. There will be a recommendation that, within 30 days of the issuance of this Report, the Town amend its policy to abolish the practice of informal access requests.

**3. Did the Town’s numerous section 7 response notices to the Applicant comply with the provisions of section 7 of LA FOIP?**

[40] Section 7 of LA FOIP provides, in part:

7(1) Where an application is made pursuant to this Act for access to a record, the head of the local authority to which the application is made shall:

(a) consider the application and give written notice to the applicant of the head’s decision with respect to the application in accordance with subsection (2); or

...

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

(a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;

...

(d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;

(e) stating that access is refused for the reason that the record does not exist;

---

<sup>5</sup> See OIPC [Review Report 214-2024](#), at paragraph [47].

...

(5) A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.

[41] Pursuant to section 7 of LA FOIP, a head shall respond in writing to an access to information request within 30 days after the request is made. The response must contain certain elements, which are enumerated in section 7(2) of LA FOIP. Among those elements provision is made for the refusal of access, and if this is the case the head must state the reason for the refusal and identify the specific provision of LA FOIP upon which the refusal is based. The head may also indicate that access is refused because the record does not exist. These requirements are set out in sections 7(2)(d) and (e) of LA FOIP.

[42] OIPC formally refers to this section 7 response notice as the “section 7 decision” for the purposes of the discussion in the following section of this report. If the head does not send a section 7 decision within 30 days of the request, the access request is deemed to be refused pursuant to section 7(5) of LA FOIP.

[43] The Applicant sent an access request to the Town on September 20, 2024. The Town acknowledged in its written submission to OIPC that the October 8, 2024 response to the Applicant was intended to be an informal response to the Applicant’s information access request. It cited the letter dated November 4, 2024 as the first section 7 decision.

[44] As reviewed in the factual portion of this report, the Town subsequently issued four other section 7 decisions. The response dated November 4, 2024, and all that followed, were issued well after the 30-day timeline requirement set out in section 7(2) of LA FOIP. Further, each of the section 7 decisions was deficient and did not comply with section 7 of LA FOIP in the following respects:

- The first, second, third and fourth section 7 decisions did not respond to Part 2 of the Applicant’s access request, which was a request for a copy of the C & W report. The fact that the C & W report was released to the Applicant by means of the fifth section 7 decision, does not mitigate the fact that the failure to respond on the earlier dates was, in effect, a deemed refusal of access to the C & W report pursuant to subsection 7(5) of LA FOIP.

- The second section 7 decision quotes subsection 7(2)(e) of LA FOIP but it does not identify the records that did not exist.
- The third and fourth section 7 decisions only address Part 1 of the Applicant's six-part access request. These two section 7 decisions are completely silent with respect to the rest of the Applicant's access requests, thus violating section 7(2) of LA FOIP.
- The fifth section 7 decision did not respond to Parts 3 to 6 of the access to information request.

[45] There is a finding that the Town's five section 7 decisions did not comply with section 7 of LA FOIP. There is a recommendation that, within 30 days of the issuance of this Report, the Town review its policies and procedures for responding to access to information requests and make any necessary changes to ensure its section 7 decisions comply with LA FOIP.

[46] In its review of its policies and procedures, the Town may wish to consult the guidance issued by the OIPC including [Guide to LA FOIP, Chapter 3](#) at pages 46 to 63, [Templates for Section 7 Decisions](#), and [Best Practices for Responding to Access Requests](#).

#### **4. Did the Town conduct a reasonable search for responsive records?**

[47] Section 5 of LA FOIP provides an applicant with a right of access to records in the possession or control of a local authority. It states:

##### **Right of access**

**5** Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a local authority.

[48] Section 5.1(1) of LA FOIP outlines the obligations upon a local authority to assist with a request for access:

##### **Duty of a local authority to assist**

**5.1(1)** Subject to this Act and the regulations, a local authority shall respond to a written request for access openly, accurately and completely.

(2) On the request of an applicant, the local authority shall:

(a) Provide an explanation of any term, code or abbreviation used in the information; or

(b) if the local authority is unable to provide an explanation in accordance with clause (a), endeavour to refer the applicant to a person who is able to provide an explanation.

[49] Regarding the obligation to search for records, the threshold to be met is one of “reasonableness.” In other words, it is not a standard of perfection, but rather what a fair and rational person would expect or consider acceptable.<sup>6</sup>

[50] A reasonable search is one in which an employee, experienced in the subject matter of the records, expends a reasonable effort to locate records which are reasonably related to the request. What is reasonable depends on the request and related circumstances. When a local authority claims that records do not exist, it is expected that they will provide OIPC with detailed information about its efforts to conduct a search if a matter goes to review.<sup>7</sup>

[51] A local authority may respond to an access to information request by stating that “records do not exist” in two circumstances. The first would include a situation where the search for records did not produce any records. Second, this response may be given in a situation where records do exist, but they are not in the “possession or control” of the local authority.<sup>8</sup>

[52] Where the claim is that records do not exist, LA FOIP does not require that the local authority prove with absolute certainty that the records do not exist. OIPC will consider reasonable explanations for why a record would not exist, but a local authority still needs to demonstrate that it made reasonable efforts to search.

---

<sup>6</sup> See OIPC [Review Report 338-2023](#) at paragraph [38].

<sup>7</sup> See OIPC [Review Report 338-2023](#) at paragraph [39].

<sup>8</sup> See OIPC [Review Report 029-2021](#) at paragraphs [13] and [15].

[53] The following are some examples of the type of information that the OIPC will consider in evaluating search efforts:

- For general requests – the local authority may wish to tie the subject matter of the request to the departments/divisions/branches/committees/boards included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search.
- Describe how records are classified within the records management system. For example, are the records classified by alphabet, year, function, and subject.
- Consider providing a copy of your organization's record schedule and screen shots of the electronic directory (folders & subfolders).
- Explain how a search of mobile electronic devices was conducted (i.e., laptops, smart phones, cell phones, tablets).
- Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicate what key terms were used to search if applicable.
- Indicate the calendar dates each employee searched.
- Indicate how long the search took for each employee.
- Indicate what the results were for each employee's search.
- Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided.<sup>9</sup>

---

<sup>9</sup> On the issue of affidavits, see OIPC's resource, [\*Using Affidavits in a Review with the IPC\*](#).

- [54] Regarding its search for records, the Town provided fulsome submissions to OIPC. They are provided below so that the reader may fully understand the findings and recommendations that follow:

...being new to the position, the records that [the Applicant] has requested predate me and being that the resolutions [they are] referencing in [their] request, do not have attachments to them, makes it difficult to pinpoint exactly what proposal [they are] looking for as we have received several draft proposals from Catteral & Wright. I have three 3" binders of draft proposals from Catteral & Wright regarding the upgrades to the Water Treatment Plant. If [they] had given me a date as to the actual proposal [they are] in search for, that would have helped pinpoint what proposal [they are] wanting. These are all public documents and I have no issue making copies for someone that has requested them if I knew the one to give. Regarding the SaskWater reports, the town is no longer in possession of these confidential proposals as they belonged to SaskWater and a resolution of Council was made to return them....I cannot give [them] proposals that we are not in possession of. As for the files from the 1980's, I do not know where any of these files would be nor do I know if they exist or even where to begin to look for them (my assistant has been here for 10+ years, and she does not know if they exist and if they do, where they would be). To my knowledge, we have all of our files in our computer system and files in our storage room (which we have looked through) and I cannot locate this said "file." How much time does a CAO need to spend on searching for documents? This is why I replied with "There will be extra charges ....."

- [55] The Town's submissions suggested that it was unable to search for the C & W report which was responsive to Part 2 of the access request, because it did not know the date of the report that was requested. Section 5.1(1) of LA FOIP imposes the "duty to assist" upon local authorities to respond to access requests "openly, accurately and completely". To fulfill this duty, local authorities should be seeking clarification and additional details from applicants if they are uncertain as to what records applicants are seeking.
- [56] The Town did not ask the Applicant for details or clarification of the date of the C&W report, so there must be a finding that the Town did not fulfill its duty to assist the Applicant in this matter.
- [57] As to the SaskWater documents that are responsive to Part 3, 4 and 6 of the Applicant's access request, the Town suggested that it did not have possession or control of the records but it did not elaborate on the search it carried out in coming to this conclusion.

[58] The Town stated that it searched for the records responsive to Part 5 of the Applicant's access request (SaskWater proposal/invitation documents from the 1980's) and could not locate any documents of this nature. The Town stated that some of its "files" from the 1980's are in its computer system, and some were in paper storage. The Town submitted that they had searched both venues and could not find any responsive records. This was the only responsive search carried out by the Town. Still OIPC was not provided with any details of the search, such as how the search was effected, how much time was spent searching and whether or not computer searches were carried out and if so, what keywords were used.

[59] When a local authority declares that responsive records do not exist, a search still must be undertaken to fulfill the obligations of a reasonable search.<sup>10</sup> An employee's opinion that records do not exist will not satisfy the legislative requirement. To fulfill the legislative requirements of section 5.1 of LA FOIP, the searching party must provide OIPC with information and evidence, including the steps it took to search for records, to support its assertion that records do not exist.

[60] Based on the limited information provided with respect to the search for records responsive to the access request, there will be a finding that the Town has not established that it conducted a reasonable search for responsive records. I recommend that, within 30 days of the issuance of this Report, the Town conduct a final search for records responsive to Parts 3, 4, 5 and 6 of the Applicant's access request and issue a comprehensive section 7 decision to the Applicant with a copy to this office.

## **5. Did the Town properly apply section 28(1) of LA FOIP?**

[61] At paragraphs [30] and [31], the types of information that the Town redacted from the building permit application and the building permit that were disclosed to the Applicant

---

<sup>10</sup> See OIPC [Review Report 029-2021](#) at paragraph [17].

with respect to Part 1 of his access request were reviewed. The Town claimed that it effected these redactions pursuant to section 28(1) of LA FOIP.

[62] Where requested records contain information about individuals other than the individual requesting the record, a local authority must consider if the mandatory exemption in section 28(1) of LA FOIP applies.

[63] Section 28(1) of LA FOIP prohibits the disclosure of personal information of individuals other than the requesting individual unless the individual about whom the information pertains consents to its disclosure or if disclosure without consent is authorized by one of the enumerated exceptions in section 28(2) or section 29 of LA FOIP.

[64] Section 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.

[65] When analyzing the proper application of section 28(1) of LA FOIP, it must first be determined if the withheld information qualifies as personal information with respect to another individual pursuant to section 23(1) of LA FOIP. Section 23(1) of LA FOIP states that to qualify as personal information, the information must be about an identifiable individual and be personal in nature. Information is about an “identifiable individual” if:

- The individual can be identified from the information (e.g., name, where they live); or
- The information, when combined with information otherwise available, could reasonably be expected to allow the individual to be identified.

[66] Section 23(1) of LA FOIP provides a list of personal information but it is not exhaustive:

**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 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 or 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.

[67] Sections 23(2)(d) and (3) of LA FOIP are also relevant to this analysis, they state:

23(2) “**Personal information**” does not include information that discloses:

...

(d) details of a licence, permit or other similar discretionary benefit granted to an individual by a local authority;

...

(3) Notwithstanding clauses (2)(d) and (e), “**personal information**” includes information that:

(a) is supplied by an individual to support an application for a discretionary benefit; and

(b) is personal information within the meaning of subsection (1).

[68] The Town maintained that the withheld information qualified as the personal information of the owner of the building permit and building permit application. In the five separate section 7 decisions, the Town did not describe the information it was claiming as personal information. The Town’s Index of Records was also silent on this issue. In response to the notice of review, the Town stated in its submission:

At the time, I understood that the name, address, phone number, email, etc was personal information therefore, I denied access by the previous CAO’s for similar information. I understood this as being the same.

[69] The Town redacted the building owner’s name, phone number, address, postal code, email address and signature on the building permit application. The Ontario Office of the Information and Privacy Commissioner (ON IPC) has found that the name and home address of an individual applying for a building permit qualifies as personal information under Ontario’s *Municipality Freedom of Information and Protection of Privacy Act*:<sup>11</sup>

Proposed buildings for which building permits are sought may be owned by, and building may be undertaken by, individuals or business entities. In my view, where the owner or builder is an individual, the name and address qualify as personal information as defined in sections 2(1)(d) and (h) of the Act. In my opinion, where the owner or builder is a business entity, the name and business address are not personal information.

---

<sup>11</sup> See ON IPC [Order M-138](#).

[70] Relying on the legislation and the guidance cited above, there is a finding that the building owner's name, phone number, address, postal code and email address on the building permit application is all valid personal information as defined by sections 23(1)(e) and (k) of LA FOIP and properly withheld. Section 23(3) of LA FOIP provides that, notwithstanding section 23(2)(d) of LA FOIP, personal information provided to support an application for a discretionary benefit is included within the definition of "personal information". There will be a finding that the Town properly applied section 28(1) of LA FOIP to the building owner's name, phone number, address, postal code, email address and signature on the building permit application.

[71] However, the names of contractors, subcontractors and insurers identify business entities, not individuals. Therefore, such information does not qualify as personal information as defined by section 23(1) of LA FOIP. Additionally, these identifiers involve individuals in a professional, official or business capacity. Names in this context generally do not qualify as personal information unless the name reveals something personal in nature about the individual.<sup>12</sup> There will be a finding that the Town improperly applied section 28(1) of LA FOIP to the names of insurance companies, general contractors and subcontractors on the building permit application. There will be a recommendation that the Town release the names of the insurance companies, general contractors and sub-contractors listed in the building permit application.

[72] Further, the ON IPC has taken pains to explain the distinction between "personal information" and information concerning residential properties<sup>13</sup>:

The distinction between "personal information" and information concerning residential properties was first addressed by Commissioner Sidney B. Linden in Order 23. The Commissioner made the following findings, which have been applied in a number of subsequent orders of this office (e.g. Orders MO-188, MO-189, PO-1847):

In considering whether or not particular information qualifies as "personal information" I must also consider the introductory wording of subsection

---

<sup>12</sup> See OIPC [Review Report 203-2024](#) at paragraph [46].

<sup>13</sup> See ON IPC [Order MO-2053](#).

2(1) of the Act, which defines “personal information” as “...any recorded information about an identifiable individual...”. In my view, the operative word in this definition is “about”. The *Concise Oxford Dictionary* defines “about” as “in connection with or on the subject of”. Is the information in question, i.e. the municipal location of a property and its estimated market value, about an identifiable individual? In my view, the answer is “no”; the information is about a property and not about an identifiable individual.

The institution’s argument that the requested information becomes personal information about an identifiable individual with the addition of the names of the owners of the property would appear to raise the potential application of subparagraph (h) of the definition of “personal information”.

Subparagraph (h) provides that an individual’s name becomes “personal information” where it “...appears with other personal information relating to the individual or where the disclosure of the name would reveal other information about the individual”. In the circumstances of these appeals, it should be emphasized that the appellants did not ask for the names of property owners, and the release of these names was never at issue. However, even if the names were otherwise determined and added to the requested information, in my view, the individual’s name could not be said to “appear with other personal information relating to the individual” or “reveal other personal information about the individual”, and therefore subparagraph (h) would not apply in the circumstances of these appeals.

[Emphasis added]

[73] In Saskatchewan, section 23(2)(d) of LA FOIP provides that details of a permit granted to an individual by a local authority (such as the Town) is not personal information.

[74] Relying on the legislation and the guidance above, there will be a finding that the Town improperly applied section 28(1) of LA FOIP to the civic address of the property, value of construction, the project name, permit holder name, and the Town’s file number for the project on the building permit itself. There will be a recommendation that the Town release the civic address of the property, value of construction, the project name, permit holder name, and the Town’s file number for the project.

#### IV FINDINGS

[75] The Commissioner has jurisdiction to conduct this review.

- [76] The Town did not have the authority to require an “informal” request of its citizens prior to a filing of a formal request under LA FOIP.
- [77] The Town’s five section 7 decisions did not comply with section 7 of LA FOIP.
- [78] The Town did not comply with its duty to assist the Applicant in locating the C&W report by failing to ask for a date or other details from the Applicant.
- [79] The Town has not established that it conducted a reasonable search for records.
- [80] The Town properly applied section 28(1) of LA FOIP to the building owner’s name, phone number, address, postal code, email address and signature on the building permit application.
- [81] The Town improperly applied section 28(1) of LA FOIP to the names of insurance companies, general contractors and subcontractors on the building permit application.
- [82] The Town improperly applied section 28(1) of LA FOIP to the civic address of the property, value of construction, the project name, permit holder name, and the Town’s file number for the project on the building permit itself.

## **V RECOMMENDATIONS**

- [83] I recommend that, within 30 days of the issuance of this Report, the Town amend its policy to abolish the practice of informal access requests.
- [84] I recommend that, within 30 days of this issuance of this Report, the Town review its policies and procedures for responding to access to information requests and make any necessary changes to ensure its section 7 decisions comply with LA FOIP.

- [85] I recommend that, within 30 days of the issuance of this Report, the Town conduct a final search for records responsive to Parts 3, 4, 5 and 6 of the Applicant's access request and issue a comprehensive section 7 decision to the Applicant with a copy to this office.
- [86] I recommend that the Town release the names of the insurance companies, general contractors and sub-contractors listed in the building permit application.
- [87] I recommend that the Town release the civic address of the property, value of construction, the project name, permit holder name, and the Town's file number for the project in the building permit itself.

Dated at Regina, in the Province of Saskatchewan, this 17<sup>th</sup> day of June, 2025.

Grace Hession David  
Saskatchewan Information and Privacy Commissioner