



REVIEW REPORT 274-2024

Rural Municipality of Reford No. 379

March 12, 2025

Summary:

The Applicant submitted an access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the Rural Municipality of Reford No. 379 (RM). The RM responded to the access to information request by releasing most of the records, but withheld part of the record pursuant to subsection 18(1)(c) of LA FOIP asserting the information contained third party information. In addition, it claimed that other records requested did not exist. At the Applicant's request, the A/Commissioner undertook a review of the RM's decision. After the review began, the RM also asserted that the information at issue was not responsive to the access to information request. Upon review, the A/Commissioner found the withheld information in the record to be responsive to the Applicant's access request. In addition, the A/Commissioner found that the RM did not meet the burden of proof in demonstrating that subsection 18(1)(c) of LA FOIP applied to the withheld information. The A/Commissioner recommended that the RM release the withheld portions of the record to the Applicant within 30 days of issuance of this Report. Finally, the A/Commissioner recommended the RM complete the Government of Saskatchewan's *Access and Privacy Course for Saskatchewan Local Authorities* online training to promote a greater understanding of how to fulfill its obligations under LA FOIP.

I BACKGROUND

- [1] On September 12, 2024, the Rural Municipality of Reford No. 379 (RM) received an access to information request from the Applicant under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) for the following:

Copy of the Bid Contracts and Permit for March 9th, 2023, Order in Council to purchase 8,000 yards of gravel, along with lab tests, gravel type, and haul & scale tickets showing actual amount purchased and hauled.

- [2] On September 13, 2024, the RM sent the Applicant a receipt acknowledging receipt of the \$20 application fee. The RM also sent its section 7 decision to the Applicant granting full access to some records and withholding portions of information on another record pursuant to subsection 18(1)(c) of LA FOIP. In addition, the RM asserted that the remainder of the records requested did not exist in the RM pursuant to subsection 7(2)(e) of LA FOIP.
- [3] On November 22, 2024, my office received a request for review from the Applicant. The Applicant requested the A/Commissioner review the RM's decision to withhold portions of the record and its determination that records did not exist.
- [4] Between December 6 and 18, 2024, my office attempted early resolution with the RM and the Applicant. During this process, the RM was unwilling to reconsider its application of subsection 18(1)(c) of LA FOIP but it did agree to share its search details in the form of a checklist with the Applicant. As a result, the Applicant advised my office on December 19, 2024, that they were satisfied with the search efforts, thereby resolving this issue.
- [5] On December 18, 2024, the RM sent a notice to the Third Party pursuant to section 41 of LA FOIP advising of the A/Commissioner's review of subsection 18(1)(c) of LA FOIP. A copy of this notice was also provided to my office. Also on December 18, 2024, the RM provided my office with an index of records and a copy of the unredacted version of the record.
- [6] On December 20, 2024, my office sent notice to the RM, Third Party, and the Applicant advising of my office's intent to undertake a review. My office requested the RM provide a copy of the redacted record and any third party correspondence by January 20, 2025. Further, my office requested submissions from all parties by February 20, 2025.
- [7] On January 2, 2025, my office received a copy of the redacted record from the RM. No third party correspondence was provided. Also on January 2, 2025, my office received an

additional email from the RM noting that the redacted information on the record was “irrelevant to the request.”

[8] On January 6, 2025, my office responded to the RM seeking clarification if the RM was also claiming the information withheld was non-responsive.

[9] On February 10, 2025, my office received an email from the RM confirming the RM was asserting the withheld information was subject to subsection 18(1)(c) of LA FOIP and was also non-responsive to the access to information request.

[10] No further submissions were received from the RM by the due date of February 20, 2025; however, correspondence between January 6 to February 10, 2025, provide some representations on its position. No submissions were received from the Third Party or the Applicant by the due date.

II RECORDS AT ISSUE

[11] The record at issue is a portion of a single page which appears to be an invoice from the Third Party to the RM for gravel hauling. There is no date on the invoice. There are dates on other portions of the record released to the Applicant ranging from April 26, 2023, to May 16, 2023. The RM has asserted the withheld information is subject to subsection 18(1)(c) of LA FOIP. Further, it asserted that the information was not responsive to the access to information request.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[12] The RM qualifies as a “local authority” as defined by subsection 2(1)(f)(i) of LA FOIP. Therefore, I find that I have jurisdiction to conduct this review.

[13] Further, subsection 2(1)(k) of LA FOIP defines a “third party” as follows:

2(1) In this Act:

...

(k) “**third party**” means a person, including an unincorporated entity, other than an applicant or local authority.

[14] The Third Party, in this case, has been identified by the RM as JDL Underground Ltd., which qualifies as a third party under LA FOIP.

[15] Before considering subsection 18(1)(c) of LA FOIP, I will first consider the RM’s assertion that the information at issue is not responsive to the Applicant’s access to information request.

2. Was there information in the record that was not responsive to the access request?

[16] A local authority must determine what records are responsive to an access to information request. My office’s *Guide to LA FOIP*, Chapter 3, “Access to Records”, updated October 18, 2023 [*Guide to LA FOIP*, Ch. 3] at page 26, defines “responsive” as meaning relevant. That is, it is a term describing records that are reasonably related to the request. Anything not related is not responsive. An applicant’s access to information request sets out the boundaries of which records are deemed responsive.

[17] When determining what information is responsive, the local authority should consider the following:

- The request itself sets out the boundaries of relevancy and circumscribes the records or information that will ultimately be identified as being responsive.
- A local authority can remove information as not responsive only if the applicant has requested specific information, such as the applicant’s own personal information.
- The local authority may treat portions of a record as not responsive if they are clearly separate and distinct and entirely unrelated to the access request. However, use it sparingly and only where necessary.

- If it is just as easy to release the information as it is to claim not responsive, the information should be released (i.e., releasing the information will not involve time consuming consultations nor considerable time weighing discretionary exemptions).
- The purpose of LA FOIP is best served when a local authority adopts a liberal interpretation of a request. If it is unclear what the applicant wants, a local authority should contact the applicant for clarification. Generally, ambiguity in the request should be resolved in the applicant's favour.

(Guide to LA FOIP, Ch. 3, pp. 26 to 27)

[18] In this matter, the RM did not initially claim that the withheld information in the record was not responsive. On January 6, 2025, the RM claimed that “the request for information is related to the ‘Mann pit’” and “the redacted information is completely irrelevant to the request.”

[19] On February 10, 2025, the RM clarified that: “the redacted content pertains to an entirely different topic and is clearly separate and distinct from [sic] the information requested...”

[20] I note that the access to information request submitted to the RM by the Applicant on September 12, 2024, specifies the type of record the Applicant is requesting in addition to a date; however, the Applicant does not specify a location for the request. The access request was worded as follows:

Copy of the Bid Contracts and Permit for March 9th, 2023, Order in Council to purchase 8,000 yards of gravel, along with lab tests, gravel type, and haul & scale tickets showing actual amount purchased and hauled.

[21] Local authorities may treat portions of a record as not responsive if they are clearly separate and distinct and entirely unrelated to the access to information request (*Guide to LA FOIP*, Ch. 3, p. 27).

[22] The access to information request does not mention the “Mann pit” in the request. There is also no indication the RM sought any clarification from the Applicant to determine if the Applicant was indeed limiting the request to only records “related to the Mann pit”. The

RM appears to have narrowed the access to information request to the “Mann pit” without any indication as to why. As the Applicant did not state a location in their access to information request, it appears that they are asking for a specific type of information from a specific date within the RM, not necessarily from the “Mann pit.” The RM’s submission did not explain how or why certain information was withheld as not responsive to the request. It merely described the withheld information as “non-responsive to the request” as “the redacted content pertains to an entirely different topic...”

[23] In this case, the Applicant sought access to copies of bid contracts and orders in council for gravel hauling. Since there was no indication from the RM nor the Applicant on the supposed narrowed scope of the review for records relating to one specific location, I find that any records relating to gravel hauling contracts as described in the Applicant’s access to information request within the RM would indeed be responsive. As I find the withheld information is responsive to the Applicant’s access to information request, I will consider the exemption applied by the RM. The RM applied subsection 18(1)(c) of LA FOIP to the same information in the record.

3. Did the RM properly apply subsection 18(1)(c) of LA FOIP?

[24] The RM applied subsection 18(1)(c) of LA FOIP to the withheld portion of the record. Subsection 18(1)(c) of LA FOIP provides:

18(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(c) information, the disclosure of which could reasonably be expected to:

(i) result in financial loss or gain to;

(ii) prejudice the competitive position of; or

(iii) interfere with the contractual or other negotiations of;

a third party;

[25] I would like to note that subsection 18(1)(c) of LA FOIP is not a single exemption, but in fact three separate mandatory, harm-based exemptions – 18(1)(c)(i), 18(1)(c)(ii) and 18(1)(c)(iii). However, neither the RM nor the Third Party has differentiated which part of subsection 18(1)(c) of LA FOIP it is asserting applies. Therefore, I must assume the RM and Third Party are asserting all three apply.

[26] Given that subsection 18(1)(c) of LA FOIP is a mandatory, harm-based exemption, local authorities should provide information and evidence that shows how disclosure of the information “could reasonably be expected to result in the harms outlined at subclauses (i), (ii), and (iii)” (*Guide to LA FOIP*, Chapter 4, “Exemptions from Right of Access”, updated October 18, 2023 [*Guide to LA FOIP*, Ch. 4], p. 184). The *Guide to LA FOIP* also outlines the tests for subsection 18(1)(c)(i), (ii), and (iii) of LA FOIP as follows:

18(1)(c)(i)

1. What is the financial loss or gain being claimed?
2. Could release of the record reasonably be expected to result in financial loss or gain to a third party?

18(1)(c)(ii)

1. What is the prejudice to a third party’s competitive position that is being claimed?
2. Could the release of the record reasonably be expected to result in the prejudice?

18(1)(c)(iii)

1. Are there contractual or other negotiations occurring involving a third party?
2. Could release of the record reasonably be expected to interfere with the contractual or other negotiations of a third party?

(*Guide to LA FOIP*, Ch. 4, pp. 185-199).

[27] My office did not receive a detailed submission from the RM. The only supporting arguments received from the RM for the application of subsections 18(1)(c)(i), (ii), and (iii) of LA FOIP were in emails to my office dated January 2, 2025, and February 10, 2025. In the January 2, 2025, email, the RM asserted the Third Party verbally told the RM on

December 19, 2024, that the release of information “was going to” ‘cause a problem’.” Nothing further was provided by the RM. The Third Party did not provide a submission to my office.

[28] To be successful at persuading my office that an exemption applies, each part of the test for each exemption being claimed must be argued specifically. Further, section 51 of LA FOIP places the burden of proof on the local authority if it claims that access should or must be refused under LA FOIP (*Guide to LA FOIP*, Chapter 2: “Administration of LA FOIP”, updated March 2, 2023 [*Guide to LA FOIP*, Ch. 2], p. 43).

[29] The RM has not provided sufficient arguments and evidence to support its reliance on subsection 18(1)(c) of LA FOIP and on the face of the record, I do not see how it applies. As such, I find that the RM did not demonstrate, pursuant to section 51 of LA FOIP, that subsections 18(1)(c)(i), (ii), and (iii) of LA FOIP apply.

[30] It should be noted that the RM sent notice to the Third Party on December 18, 2024, pursuant to section 41 of LA FOIP. I note the RM invited submissions from the Third Party while also notifying the Third Party of my review. The time for the RM to receive submissions from the Third Party had already passed. The purpose of a section 41 notice is to advise a Third Party of the A/Commissioner’s review. In the future, I would suggest the RM should provide a section 33 notice to the Third Party in the initial 30-day window if they intend to release the records. Further, they should give notice under section 41 when my office has indicated it intends to do a review.

[31] In addition, from this review and the previous reviews issued by my office with this RM, it is apparent that the RM needs to take steps to be more prepared in meeting its obligations under LA FOIP. My office has had numerous involvements with the RM between 2023 and 2025, including five review reports ([336-2023](#), [071-2024](#), [162-2024](#), [256-2024](#), [257-2024](#), [275-2024](#)) and one disregard decision ([070-2024](#), [074-2024](#), [076-2024](#)). It is important to note that Review Report 071-2024 also dealt with the RM not meeting the burden of proof, pursuant to section 51, in demonstrating that subsection 18(1)(c) of LA FOIP applied. In Review Report 071-2024 at paragraphs [97], [98], and [99], my office

again reviewed each of the subclauses for the exemption. I note that “the RM did not provide my office with any of this type of information.” I also note that at paragraph [104] I clearly stated that “...the RM did not provide sufficient arguments and evidence to support its reliance on subsection 18(1)(c) ... of LA FOIP.”

[32] Despite my recommendations in these previous reports, the RM continues to be coming up short in meeting its obligations under LA FOIP. I recommend that, within 60 days of the issuance of this Report, the RM complete the Government of Saskatchewan’s [*Access and Privacy Course for Saskatchewan Local Authorities*](#) online training to gain a greater understanding of how to fulfill its obligations under LA FOIP.

IV FINDINGS

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

[34] I find that any records relating to gravel hauling contracts as described in the Applicant’s access to information request within the RM would indeed be responsive.

[35] I find that the RM did not demonstrate, pursuant to section 51 of LA FOIP, that subsections 18(1)(c)(i), (ii), and (iii) of LA FOIP apply.

V RECOMMENDATIONS

[36] I recommend the RM release to the Applicant the remainder of the record, within 30 days of issuance of this Report.

[37] I recommend that, within 60 days of the issuance of this Report, the RM complete the Government of Saskatchewan’s [*Access and Privacy Course for Saskatchewan Local Authorities*](#) online training to gain a greater understanding of how to fulfill its obligations under LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 12th day of March 2025.

Ronald J. Kruzeniski, KC
A/Saskatchewan Information and Privacy
Commissioner