

**SASKATCHEWAN**  
**OFFICE OF THE**  
**INFORMATION AND PRIVACY COMMISSIONER**

**INVESTIGATION REPORT LA-2012-001**

**City of Moose Jaw**

**Summary:**

Two employees of the Moose Jaw Board of Police Commissioners (the Board) complained that details of their salary had been published by the City of Moose Jaw (the City) in its annual public accounts without their consent and without lawful authority. There is authority for the City to publish in its public accounts information about the salaries paid to the employees and officers of the City and of any board, commission or other body that is appointed by *The Cities Act* and which is prescribed. That would require that the Board be “established pursuant to *The Cities Act*.” The Commissioner found that the Board was instead established pursuant to *The Police Act, 1990*. In the result, the information of the employees in question qualified as “personal information” within the meaning of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). There was no authority in LA FOIP to disclose the salary information of the complainants. By reason of the operation of section 11 of *The Cities Regulations*, the City is constrained from publishing the complainants’ personal information in identifiable form. The Commissioner further recommended that the Legislative Assembly clarify whether it intends that boards of police commissioners and municipal police services in Saskatchewan are or are not “local authorities” for purposes of LA FOIP.

**Statutes Cited:**

*The Local Authority Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. L-27.1, ss. 2(f)(i), 2(f)(iv), 2(f)(v), 2(f)(xvii), 3(1)(a), 3(1)(b), 4, 23(1)(b), 23(1)(i), 23(1)(j), 23(1)(k)(i), 23(2)(a), 24, 28(2)(a), 28(2)(i), 28(2)(p), 28(2)(r), 28(2)(s); *The Local Authority Freedom of Information and Protection of Privacy Regulations*, c. L-27.1 Reg 1, s. 3(1), Appendix 1, Part 1; *The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01; *The Cities Act*, c. 11.1, S.S. 2002,

ss. 55, 156; *The Cities Regulations*, c-11.1 Reg 1, ss. 9 [prior to 2010], 11; *The Police Act*, S.S. 1990-91, c. P-15.01, s. 27(1); *The Interpretation Act*, 1995, S.S. 1995, c. I-11.2; *The Financial Administration Act*, 1993, S.S. 1993, c. F-13.4.

**Authorities Cited:** Saskatchewan OIPC Reports LA-2007-002, LA-2010-002, Investigation Report F-2005-001; *Germain v. Automobile Injury Appeal Commission*, 2009 SKQB 106; *General Motors Acceptance Corporation of Canada, Limited v. Saskatchewan Government Insurance*, [1993] S.J. No. 601; *General Motors Acceptance Corporation of Canada, Limited v. Saskatchewan Government Insurance*, [1993] S.J. No. 206; *City Collection Co. v. Saskatchewan Government Insurance*, [1993] S.J. No. 535; *McCleave Estate v. Moncton (City)*, (1902), 32 S.C.R.; *Toronto Police Services Board v. Toronto Police Assn. (use of Force and Equipment Grievance)*, [2011] O.L.A.A. No. 65; *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, [2000] 1 S.C.R. 360; *re The Trade Union Act, 1944 Bruton (Applicant) v. Regina City Policemen's Association, Local No. 155 (Respondent)*, [1945] S.J. No. 62; *Bowles v. City of Winnipeg* [1919] M.J. No. 48; *Pon Yin v. The City of Edmonton, Hill and Kroning*, [1915] A.J. No. 61; *Caratozzolo v. Murdock*, [1982] A.J. No. 135.

**Other Sources Cited:**

Saskatchewan OIPC 2009-2010 Annual Report, 2008-2009 Annual Report, 2007-2008 Annual Report, 2005-2006 Annual Report; Moose Jaw *Times Herald*. "Running this city cost a lot of money." August 15, 2005; Ministry of Finance, *Plan for 2010-2011*; Ministry of Municipal Affairs, *Plan for 2011-12*; Moose Jaw Bylaw No. 4713, *A Bylaw of the City of Moose Jaw to Establish a Board of Police Commissioners*; *Concise Oxford English Dictionary*, 10<sup>th</sup> Ed; Driedger, Elmer, *The Composition of Legislation*, Queen's Printer and Controller of Stationery, Ottawa, 1957; *The Saskatchewan Police Commission Policy Manual*, April 2004.

## I BACKGROUND

- [1] The Complainants wrote to our office on August 18, 2006 alleging that the City of Moose Jaw (the City) had improperly disclosed information with respect to monies received by them as employees of the Moose Jaw Police Service.
- [2] The complainants referred us to an article in the August 15, 2005 edition of the *Moose Jaw Times Herald* and reference in the article to an excerpt from the *City of Moose Jaw Public Accounts 2005*. The article was entitled “Running this city cost a lot of money”.<sup>1</sup> Under a subtitle, “*The city’s top 20*” the names of the two Complainants in addition to 10 other members of the Moose Jaw Police Service were published as well as their regular remuneration plus other remuneration. In their complaints, the Complainants stated that neither was an employee of the City and that the publication of their remuneration constituted personal information released in violation of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).<sup>2</sup>
- [3] Our office has no jurisdiction over the *Times Herald* so our focus is exclusively on the public sector bodies that are or potentially may be involved in this investigation.
- [4] The City is required by *The Cities Act* to produce public accounts on or before September 1 of each year. That provides as follows:

156(1) On or before September 1 in each year, a city shall cause to be prepared and presented to the council the city’s public accounts for the preceding financial year.

(2) Subject to the regulations, the public accounts prepared pursuant to subsection (1) must:

(a) incorporate the audited financial statement of the city; and

(b) show clearly and fully:

(i) the remuneration paid to each employee and member of council;

---

<sup>1</sup> *Moose Jaw Times Herald* “Running this city cost a lot of money,” August 15, 2005.

<sup>2</sup> *The Local Authority Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. L-27.1.

- (ii) the remuneration paid to each employee and member of any committee or other body established by council pursuant to clause 55(a);
  - (iii) the remuneration paid to each employee and member of any other body established by council that receives the majority of its funds from the city;
  - (iv) the remuneration paid to each employee and board member of a controlled corporation;
  - (v) expenditures for travel and other expenses incurred by the employees, council members and board members described in subclauses (i) to (iv);
  - (vi) expenditures pursuant to any contract; and
  - (vii) grants and contributions of goods and services.
- (3) The city shall cause all public accounts of the city:
- (a) to be open for inspection by any person at all reasonable hours; and
  - (b) to be printed in sufficient quantity and distributed in a manner that will satisfy any reasonable requests for copies.
- (4) The minister may make regulations respecting requirements for or limitations on public accounts.<sup>3</sup>

[5] The City took the position that it has authority to include in its public accounts the remuneration paid to employees of the Moose Jaw Board of Police Commissioners (the Board). In fact, it asserts that it is statutorily obligated to do so. Those reasons have been detailed by the City in its October 13, 2006 letter to our office as follows:

Firstly, subsection 156(2) of *The Cities Act* enumerates the types of financial information that the City of Moose Jaw is required to include in its annual Public Accounts. In this regard, I draw your attention to article 156(2)(b)(iii) which specifically requires the City to including [sic] “*the remuneration paid to each employee...of any body established by council that receives the majority of its funds from the city*”. It is the opinion of the City of Moose Jaw that the Moose Jaw Police Service is a “body” within the meaning of this section. The Moose Jaw Board of Police Commissioners was established by City Council and all employees of the Moose Jaw Police Service are employees of the Board of Police Commissioners. The City of Moose Jaw records indicated that the annual operating budget of the Moose Jaw Police Service was approximately \$6.498 million, of which, \$5.6 million (or approximately 86.3%) was provided by the City of Moose Jaw. It seems clear that

---

<sup>3</sup> *The Cities Act*, c. 11.1, S.S. 2002, section 156.

section 156(2)(b)(iii) of *The Cities Act* expressly requires the inclusion of information regarding salaries paid to employees of the Moose Jaw Police Service within the Municipal Public Accounts of the City of Moose Jaw. To which end, it should be noted that all five (5) cities that have a non-RCMP police force (being Regina, Saskatoon, Prince Albert, Moose Jaw and Weyburn) all report the salaries of employees of their local police service in their Municipal Public Accounts.

Secondly, the long standing practice of both the City of Moose Jaw and the Moose Jaw Police Service has been for the City of Moose Jaw to make individual payments, on behalf of the Police Service, to its employees, contractors and any other person receiving a payment (contractual or otherwise) from the Moose Jaw Police Service. In other words, the City of Moose Jaw did not make a gross payment to the Moose Jaw Police Service in 2005 of \$5.6 million. Rather, the City of Moose Jaw made thousands of individual payments to employees, contractors and other persons on behalf of the Moose Jaw Police Service. The point of the foregoing is that the 2005 Public Accounts represents an accurate reporting of the actual transactions undertaken by the City of Moose Jaw in the year 2005 as required pursuant to *The Cities Regulations*. To have reported this information otherwise would have been inaccurate and contrary to the statutory requirements imposed on the City of Moose Jaw pursuant to *The Cities Act* and regulations.

Thirdly, paragraph 23(2)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* specifically indicates that the disclosure of “*the salary...of an individual which is or was an officer or employee of a local authority*” is not protected “personal information” within the meaning of the Act. It appears reasonable to assume that this provision was intended as the corollary of the requirements imposed by the Provincial government with respect to the preparation and release of Municipal Public Accounts, which are expressly required to contain information as to the salaries of persons in the employee of the municipal corporation, including its boards, committees and controlled corporations. In fact, *The Cities Regulations* specifically require information to be organized under functional categories, including one for “protective” services. Granted the exemption set forth in paragraph 23(2)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* is not as broad as the reporting requirements imposed upon cities by *The Cities Act* and regulations. In this regard, your Office may wish to contact your colleagues in the Department of Government Relations to discuss better coordination of your respective legislation.

- [6] The Board is the organization that has responsibility for the delivery of police services within the City. In addition there is a Moose Jaw Police Service that is comprised of the civilian employees and the police officers that actually deliver the protection and law enforcement services in the City. The head official with responsibility for the police service would be the Chief of Police. I take the reference to the Moose Jaw Police

Service in the representations from the City as reference to both the police service and the Board so as to capture both entities.

[7] The requirements and limitations of such a report on public accounts is codified in *The Cities Regulations*. Those requirements at the material time for purposes of this investigation were as follows:

9 The report in a city's public accounts of:

(a) remuneration paid by the city and by any board:

(i) must include remuneration of \$20,000 or more paid to any employee of the city or of any board for the year with respect to which the report is prepared;

(ii) must not include any amounts paid by the city or any board with respect to any benefits, pension benefits or disability benefits to or on behalf of any employee of the city or of any board; and

(iii) must contain the name and most recent employment title of each employee of the city or of any board who was paid \$20,000 or more for the year with respect to which the report is prepared;

(b) expenditures made by the city and by any board pursuant to contracts:

(i) must include expenditures pursuant to contracts for any goods or services if the aggregate of the expenditures pursuant to the contracts for any of those goods or services is \$10,000 or more;

(ii) with respect to the contracts mentioned in subclause (i), must contain the names of the persons and organizations:

(A) with whom the contracts were made; and

(B) to whom payments were made;

(c) grants by the city or by any board to persons or organizations:

(i) must include grants of \$2,000 or more; and

(ii) must contain the names of the persons and organizations to whom they were made; and

(d) goods and services provided by the city and by any board in aid of persons or organizations:

(i) if the value of any goods or services is not readily ascertainable, must not include the value of those goods or services;

(ii) if the aggregate value of all grants of goods or services to any persons or organizations is \$2,000 or more, must include those grants of goods or services to those persons or organizations; and

(iii) if grants of goods or services to any persons or organizations mentioned in subclause (ii) were made, must contain the names of the persons and organizations;

(e) expenditures for travel and other expenses included by any employees of the city or of any board related to the business of the city or of any board or related to attendance at conventions or meetings relating to any city or board matter:

(i) must include any expenditures, the aggregate of which is \$2,000 or more; and

(ii) must not include the regular salary or other compensation for services of the employees; and

(f) expenditures for membership in any association, for the receiving or entertaining of guests, or for honouring persons who, in the council's opinion, have served the city with honour or who have brought honour to the city:

(i) must include any expenditures of \$1,000 or more; and

(ii) must contain the name of each person to whom or on whose behalf any expenditure of \$1,000 or more was made.<sup>4</sup>

[8] This case raises important issues concerning the accountability of public bodies to the public and the protection of the personal information of individuals. The position of our office has been that despite the duality of *The Freedom of Information and Protection of Privacy Act* (FOIP)<sup>5</sup> and LA FOIP (access to information in Parts II and III and protection of privacy in Part IV), these two objectives are not for the most part in conflict. In our experience, most access requests do not involve the personal information of third parties. In this case however, there is a clear tension between access/accountability and privacy.

---

<sup>4</sup> *The Cities Regulations*, c-11.1 Reg 1, section 9. Note: *The Cities Regulations*, section 9 was amended in 2010. This Report is quoting section 9 of *The Cities Regulations* before the 2010 amendments.

<sup>5</sup> *The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01.

- [9] Despite the fact that FOIP was proclaimed in 1992 and LA FOIP (for municipalities) was proclaimed in 1993 there is little direction or commentary from either the Legislative Assembly or from the courts that bears directly on this case. In addition, a review of all decisions issued by my three distinguished predecessors from 1992 to 2003 reveals very few decisions dealing with LA FOIP. There have been only a handful of court decisions related to appeals by aggrieved applicants and none that provide a great deal of guidance in resolving the issues in this case. As well, as I have observed in past Annual Reports, the Ministry of Justice and Attorney General that has administrative responsibility for both statutes has not produced any kind of comprehensive manual to assist applicants and public bodies to interpret and apply the exclusions and exemptions found in both statutes.<sup>6</sup>
- [10] Before isolating and analyzing the issues raised by this privacy complaint, I should caution the reader that any analysis of one section is interrelated to other sections of both LA FOIP and other applicable legislation. As a consequence, it is necessary in some cases to discuss an issue but refrain from completing the analysis until there has been consideration of other related statutory or regulatory provisions. My view is that the complexity of the analysis underscores the need for access and privacy legislation to be clear and accessible if we wish to achieve high levels of compliance in our jurisdiction. I think this report highlights the value of clear and unambiguous language to clarify its intentions for both local authorities and the public.

---

<sup>6</sup> Saskatchewan Information and Privacy Commissioner (hereinafter SK OIPC), *2009-2010 Annual Report*, p. 6; *2008-2009 Annual Report*, p. 7; *2007-2008 Annual Report*, p. 13; *2005-2006 Annual Report*, pp. 4, 15-16, all available at [http://www.oipc.sk.ca/annual\\_reports.htm](http://www.oipc.sk.ca/annual_reports.htm).



## II ISSUES

1. Does *The Local Authority Freedom of Information and Protection of Privacy Act* apply to the actions of the City of Moose Jaw in publishing the information in question?
  - a. Has the information at issue been excluded from the scope of *The Local Authority Freedom of Information and Protection of Privacy Act* by reason of section 3?
  - b. Has the information at issue been excluded from the scope of *The Local Authority Freedom of Information and Protection of Privacy Act* by reason of section 4?
2. Is the Moose Jaw Board of Police Commissioners a local authority?
  - a. Was the Moose Jaw Board of Police Commissioners appointed pursuant to *The Cities Act*?
  - b. Was the Moose Jaw Board of Police Commissioners prescribed in *The Local Authority Freedom of Information and Protection of Privacy Regulations*?
3. What is the nature of the relationship between the City of Moose Jaw and the Moose Jaw Board of Police Commissioners?
4. Has the information in question been disclosed by a local authority contrary to *The Local Authority Freedom of Information and Protection of Privacy Act*?

## III DISCUSSION OF THE ISSUES

1. Does *The Local Authority Freedom of Information and Protection of Privacy Act* apply to the actions of the City of Moose Jaw in publishing the information in question?
  - a. Has the information at issue been excluded from the scope of *The Local Authority Freedom of Information and Protection of Privacy Act* by reason of section 3?

[11] Section 3 of LA FOIP provides in part as follows:

3(1) This Act does not apply to:

- (a) published material or material that is available for purchase by the public;
- (b) material that is a matter of public record...<sup>7</sup>

[12] I considered section 3(1)(a) in my Report LA-2007-002.<sup>8</sup> I described this provision as a feature akin to a mandatory exemption and something that warrants consideration regardless of whether it is raised by the local authority. In that particular Report I found that the tax certificate issued by a rural municipality (R.M.) would qualify for exclusion from LA FOIP. I further found that the information sought by the applicant in that case could be purchased through a combination of tax certificates from the R.M. and title searches from the Information Services Corporation. Consequently section 3(1)(a) of LA FOIP was a full answer to the request for review by the applicant in that case.

[13] The City has not established that the information in question was previously published or available for purchase by the public.

[14] Now, I turn to section 3(1)(b) of LA FOIP. In my Investigation Report F-2005-001<sup>9</sup> I considered what “public record” means since this is not defined in either FOIP or LA FOIP nor is it defined in *The Interpretation Act, 1995*.<sup>10</sup> That was in the context of publication on the Internet however that is not the case with the complaint now before me.

[15] Subsequently, Mr. Justice Ottenbreit of the Court of Queen’s Bench considered the definition of “public record” in *Germain v. Automobile Injury Appeal Commission* 2009 SKQB 106. This involved a Charter challenge to the Internet publication of decisions involving personal information and personal health information by the Automobile Injury

---

<sup>7</sup> *Supra* note 2 sections 3(a) and 3(b).

<sup>8</sup> SK OIPC Report LA-2007-002, available at <http://www.oipc.sk.ca/Reports/LA-2007-002.pdf>.

<sup>9</sup> SK OIPC Investigation Report F-2005-001, available at <http://www.oipc.sk.ca/Reports/2005-001.pdf>.

<sup>10</sup> *The Interpretation Act, 1995*, S.S. 1995, c. I-11.2.

Appeal Commission. Although that decision was focused on Internet publication, I find his discussion of section 3 of FOIP is relevant to the question now before me.

[16] He stated as follows:

[68] The application of s. 29(1) of FOIPP which mandates consent, is in this situation restricted by s. 3. It states:

3(1) This does not apply to:

...

(b) material that is a matter of public record; or

...

[69] FOIPP does not define what is a matter of public record. Black's Law Dictionary 8<sup>th</sup> Edition defines "public record" at p. 1279 as

**A record that a governmental unit is required by law to keep, such as land deeds kept at a county courthouse. Public records are generally open to view by the public.**

[70] A number of cases have considered the phrase "public record". In *General Motors Acceptance Corporation of Canada v. Perozni, supra*, at para. 59, the Alberta District Court concluded that public records "refers to certain records or documents which are kept by certain government officials whose duty it is to inquire into and record permanently matters and facts about public matters. Under this definition would fall...court and certain government tribunal records."

[71] In *Sturla v. Freccia* (1880), 5 A.C. 623 at p. 643 Lord Blackbburn stated: ...I understand a public document there to mean a document that is made for the purpose of the public making use of it, and being able to refer to it.

[72] I accept all of these three definitions of "public record". The Commission is a public adjudicative body required to make and keep its decisions. Section 92 of the *Regulations* states that Commission hearings are open to the public unless the Commission orders otherwise. Its decisions are open to the public even without publishing them on the web. Further, s. 95(1) and 95(2)(d) places an obligation on the Commission to compile a record of a hearing that was held, which consists in part of the written decision of the appeal commission. It is common ground that the decision is on file at the Commission and accessible to the public. The decision of the Commission contains information prepared by a government institution which has a duty to inquire into the issues associated with the hearing and record its findings permanently.

[73] Further, it seems illogical that members of the public could sit at the hearing and listen to all of the evidence but not have access to the decision of the Commission. The written decision is the last piece of the hearing process. Public access to decisions made by the Commission is important to assist individuals in presenting their claims and understanding the decision-making process of the Commission and to further the principle of public access to adjudicative bodies.

[74] Based on the analysis above, I find that the decision of the Commission are a matter of public record as set forth in s. 3(1)(b). ...<sup>11</sup>

[emphasis added]

[17] If I consider the three tests utilized by Justice Ottenbreit, certainly the first of the three definitions utilized by him could apply to the salary information I must consider. There is a legal requirement to produce public accounts that detail expenditures of the City. Those public accounts are to reflect the actual payments made by the City with public funds in a given fiscal year. Public accounts would be generally open to view by the public. There is no need to consider the other two tests discussed by Justice Ottenbreit and, in any event, they can perhaps be distinguished given that this case does not involve the decision of an administrative tribunal.

[18] The information in question here cannot be considered as highly sensitive or prejudicial as that considered in my Investigation Report F-2005-001 or in the judgment of Justice Ottenbreit. In fact, for employees of any local authority such information as salary and other remuneration is expressly carved out of the definition of “personal information” by virtue of section 23(2)(a) of LA FOIP that provides as follows:

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

(a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a local authority...<sup>12</sup>

[19] It is significant that the forum for publication of the Complainants’ information was the public accounts of the City. It would be difficult to imagine an instrument that was more

---

<sup>11</sup> *Germain v. Automobile Injury Appeal Commission, 2009 SKQB 106*, at [69] to [74].

<sup>12</sup> *Supra* note 2 section 23(2)(a).

closely linked to the notion of transparency and accountability to the public than public accounts.

- [20] The role of the public accounts is clearly described in the following quote from the Ministry of Finance's *Plan for 2010-11*:

**Continued strong financial reporting is essential to strong accountability. The Public Accounts are key financial accountability documents that are publicly released on an annual basis.** The Public Accounts are prepared and tabled, in accordance with *The Financial Administration Act, 1993 (FAA)*. The Ministry prepares and publishes the Public Accounts, pulling together information from ministries and other government organizations. The FAA requires the Public Accounts to be tabled on or before October 31. However, a policy has been in place since 2000 for tabling Volume 1 of the Public Accounts, on or before August 1. For the last several years, the Government has been in a position to table Volume 1 in late June or early July. The timely reporting of Volume 1, which contains the General Revenue Fund Financial Statements and the Summary Financial Statements, **demonstrates Finance's leadership for good governance, transparency and accountability across government.**<sup>13</sup>

[emphasis added]

- [21] I accept for purposes of this investigation that the purpose of public accounts is no different when it comes to the municipal arena.

- [22] The Ministry of Municipal Affairs, in its *Plan for 2011-12*, has identified accountability to the citizen as a primary goal of financial reporting by Saskatchewan municipalities in the note that introduces the four priority promises as follows:

**Government Goal - Promises**

Keep Government's *Promises* and fulfill the commitments of the election, operating with integrity and transparency, accountable to the people of Saskatchewan.<sup>14</sup>

- [23] One of the four priority promises is described in part as follows:

---

<sup>13</sup> Ministry of Finance, *Plan for 2010-11*, available online at <http://www.finance.gov.sk.ca/PlanningAndReporting/2010-11/FinancePlan1011.pdf>.

<sup>14</sup> Ministry of Municipal Affairs, *Plan for 2011-12*, available online at <http://www.municipal.gov.sk.ca/Default.aspx?DN=9743f09c-254c-4930-8057-b61b1b856479>.

**Strategy: Increase municipal financial and operational transparency and accountability**

Continue to work with the municipal sector to enhance professional and administrative capacity, focusing on financial reporting and accountability...

[24] I find that the purpose of public accounts is one of transparency and accountability to the public. It appears therefore that I can conclude that normally public accounts for the City and the information revealed by that instrument would qualify as a public record within the meaning of section 3(1)(b) of LA FOIP if the salary information of employees of the Board is caught by section 9 of *The Cities Regulations*. I further consider this in the context of issue #4 of this Report.

**b. Has the information at issue been excluded from the scope of *The Local Authority Freedom of Information and Protection of Privacy Act* by reason of section 4?**

[25] Section 4 of 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;
- (c) does not limit the information otherwise available by law to a party to litigation;
- (d) does not affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents;
- (e) does not prevent access to a registry operated by a local authority where access to the registry is normally allowed to the public.<sup>15</sup>

---

<sup>15</sup> *Supra* note 2 section 4.

[26] On several occasions Saskatchewan courts have had occasion to consider section 4 of FOIP – a section virtually identical to section 4 of LA FOIP. Subsections 4(c) and (d) of LA FOIP clearly have no application in this particular case.

[27] I note that when section 4 of FOIP has been considered in past court decisions, it was determined that it was important whether the publication antedated the proclamation of the privacy law. The approach the Court of Appeal has taken in the past is to view this provision as a kind of a grandfathering provision. The Court of Appeal affirmed in *General Motors Acceptance Corporation of Canada, Limited v. Saskatchewan Government Insurance* that:

The Act does not limit or reduce the rights of access existing at the time of proclamation.<sup>16</sup>

[28] The Court of Appeal was considering section 4 of FOIP as did the earlier decision of the Court of Queen’s Bench in *City Collection Co. v. Saskatchewan Government Insurance*.<sup>17</sup> Justice Barclay indicated that he was following the judgment of Justice Malone in the case of *General Motors Acceptance Corporation of Canada, Limited v. Saskatchewan Government Insurance* where he stated:

In my opinion s. 4 of the Act is determinative of the issue. The clear intent of this section is to provide that information available to the public prior to the passage of the Act shall remain available after its coming into effect. To interpret this section any other way would result in a restriction on the right of the public to obtain information which it previously had access to. This surely was not the intention of the Legislature. The provisions of the Act following s. 4 must be interpreted as applying to only information which is requested by the public which was not available to it prior to the passage of the Act. It is these provisions that attempt to balance the right of privacy of individuals with the desire of the public to obtain more information concerning the operation of Government, its Crown corporations and agencies. This it does by setting out the procedures to be followed and the guidelines to be applied. In my opinion, however, s. 4 makes it clear the procedures and guidelines are not to be applied retrospectively so as to restrict access to information the public was previously entitled to.<sup>18</sup>

---

<sup>16</sup> *General Motors Acceptance Corporation of Canada, Limited v. Saskatchewan Government Insurance* [1993] S.J. No. 601, at p. 3.

<sup>17</sup> *City Collection Co. v. Saskatchewan Government Insurance* [1993] S.J. No. 535.

<sup>18</sup> *General Motors Acceptance Corporation of Canada, Limited v. Saskatchewan Government Insurance* [1993] S.J. No. 206, at p. 3.

[29] My view is that to successfully invoke section 4(a), (b) or (e) the City would need to show that the salary information of the Board employees had routinely been publicly available prior to the enactment of LA FOIP in 1993 and that this availability was lawful and had not been prohibited by statute. As stated earlier, the City has not established these elements. Therefore 4(a), (b) or (e) would not apply.

[30] Furthermore, section 4(a) is not engaged since what is at issue is an alleged breach of privacy not a request for access to records.

## 2. Is the Moose Jaw Board of Police Commissioners a local authority?

[31] The City clearly qualifies as a “local authority” by reason of section 2(f)(i) of LA FOIP. That subsection provides as follows:

2 In this Act:

...

**(f) “local authority” means:**

...

**(i) a municipality**...<sup>19</sup>

[emphasis added]

[32] The next question is whether the Board also qualifies as a local authority. For it to do so would require that it is captured in some other portion of the definition of “local authority” in subsection 2(f) of LA FOIP. It appears that there are only three other subsections of section 2(f) that could possibly apply. These are as follows:

2 In this Act:

...

(f) “local authority” means:

...

(iv) a committee of a council of a municipality;

(v) any board, commission or other body that:

---

<sup>19</sup> *Supra* note 2 section 2(f)(i).



(A) is appointed pursuant to *The Cities Act, The Municipalities Act or The Northern Municipalities Act, 2010*; and

(B) is prescribed;

...

(xvii) any board, commission or other body that:

(A) receives more than 50% of its annual budget from the Government of Saskatchewan or a government institution; and

(B) is prescribed ...<sup>20</sup>

[33] The City has provided a copy of Bylaw No. 4713, *A Bylaw of the City of Moose Jaw to Establish a Board of Police Commissioners*. It provides as follows:

WHEREAS The Police Act, 1990 S.S. 1990, c. P-15.01 as amended **provides for the establishment of a Board of Police Commissioners** for the City of Moose Jaw.

NOW, THEREFORE, THE COUNCIL OF THE MUNICIPAL CORPORATION OF THE CITY OF MOOSE JAW ENACTS AS FOLLOWS:

1. A Board of Police Commissioners for the City of Moose Jaw is hereby established.
2. The Board of Police Commissioners shall consist of:
  - (a) The Mayor; and
  - (b) Two (2) Members of the Council to be appointed annually by the Council; and
  - (c) Two (2) other persons, other than members of Council, to be appointed annually by the Council, as members-at-large.
3. The appointment of the two (2) members of the Council referred to in Clause 2(b) and the two (2) members-at-large referred to in Clause 2(c) of this bylaw shall be by resolution of the Council.
4. Pursuant to The Police Act, 1990 S.S. 1990, c.P-15.01 as amended, the Moose Jaw Board of Police Commissioners is a body corporate and has all the powers, authority and duties as provided for in The Police Act, 1990 S.S. 1990, c. P-15.01 as amended.
5. Bylaws Nos. 2902 and 4071 are repealed.

---

<sup>20</sup> *Ibid.* sections 2(f)(iv), 2(f)(v), 2(f)(xvii).

6. This Bylaw shall come into force and effect on the 1<sup>st</sup> day of November A.D. 1991.

PASSED AND ENACTED this 16<sup>th</sup> day of September, A.D. 1991.

“signed”  
Mayor

“signed”  
City Clerk

READ A FIRST TIME the 16<sup>th</sup> day of September, A.D. 1991.

READ A SECOND TIME the 16<sup>th</sup> day of September, A.D. 1991.

READ A THIRD TIME the 16<sup>th</sup> day of September, A.D. 1991.<sup>21</sup>

[emphasis added]

[34] The Complainants have referred me to a submission from the City to the Saskatchewan Labour Relations Board on October 18, 2005 in respect to an application by the Moose Jaw Police Association for an order for an unfair labour practice finding. This document is in the form of a Reply made by the Respondents to the application, namely the City, the Board and a named individual. The Complainants have drawn our attention to and rely upon the following portion of the Reply:

5. The following is a concise statement of the material facts intended to be relied upon by the Moose Jaw Board of Police Commissioners in support of this Reply:

(a) The Moose Jaw Board of Police Commissioners is an **independent corporate authority constituted pursuant to The Police Act, 1990.**<sup>22</sup>

[emphasis added]

[35] I note that *The Police Act, 1990* makes it mandatory for a municipality to establish a police service and when, as in the case of the City, it does so, this happens under the requirement of section 27(1) of *The Police Act, 1990*. That provides as follows:

---

<sup>21</sup> Moose Jaw Bylaw No. 4713, *A Bylaw of the City of Moose Jaw to Establish a Board of Police Commissioners*.

<sup>22</sup> Reply of City of Moose Jaw to the Saskatchewan Labour Relations Board. Re Application by Moose Jaw Police Association date the 13<sup>th</sup> Day of September, 2005 to the Saskatchewan Labour Relations Board for an Order for an unfair Labour Practice Finding (LRB File No. 157-05). Received by Saskatchewan Labour Relations Board on October 18, 2005. p. 4.

27(1) Unless the minister directs otherwise in writing, **a municipality**:

(a) that has a population of 5,000 or more; or

(b) that:

(i) has a population under 5,000; and

(ii) has established a police service;

**shall establish, by bylaw, a board of police commissioners.**<sup>23</sup>

[emphasis added]

[36] Given the requirements in *The Police Act, 1990* I find that it would not have been the contemplation of the Legislative Assembly that a board of police commissioners would be captured by the phrase in section 2(f)(iv) of LA FOIP “a committee of a council of a municipality”. This suggests that this would be in the discretion of the municipal council and would not be something mandated by a separate statute as has been done by *The Police Act, 1990*.

[37] Similarly, I find that, on the basis of the representations by the City, the Board receives more than 50% of its annual budget from the City and not the Government of Saskatchewan or a government institution. In fact, the City has represented that in the year 2006 approximately 86.3% of the Board’s budget was provided by the City. Therefore subsection 2(f)(xvii) of LA FOIP would not apply.

[38] This leaves only one other possibility to qualify the Board as a local authority – subsection 2(f)(v) of LA FOIP. This provides as follows:

2 In this Act:

...

(f) “local authority” means:

...

(v) any board, commission or other body that:

---

<sup>23</sup> *The Police Act, 1990*, S.S. 1990-91, c. P-15.01, section 27(1).

(A) is appointed pursuant to *The Cities Act*, *The Municipalities Act* or *The Northern Municipalities Act, 2010*; and

(B) is prescribed ...<sup>24</sup>

[39] I propose to deal with this subsection by dealing sequentially with the two elements.

**a. Was the Moose Jaw Board of Police Commissioners appointed pursuant to *The Cities Act*?**

[40] Was the Board “appointed pursuant to *The Cities Act*...”? The definition of “appoint” in the *Concise Oxford English Dictionary* is “v. 1. Assign a job or role to...”.<sup>25</sup> The enabling power to appoint bodies is found in section 55 of *The Cities Act* and provides as follows:

55 A council **may**:

(a) establish council committees and other bodies and define their functions; and

(b) establish:

(i) the procedure and conduct of council, council committees and other bodies established by the council; and

(ii) rules for the conduct of councilors, of members of council committees and of members of other bodies established by council.<sup>26</sup>

[emphasis added]

[41] What is interesting about the above provision is that it is a discretionary power by reason of the use of the permissive word “may”. It allows the municipal council to define the functions of such bodies. It allows the municipal council to establish procedure and conduct as well as rules for the conduct of members of these other bodies established by council. Significantly, I can find no specific reference to police services or a board of

---

<sup>24</sup> *Supra* note 2 section 2(f)(v).

<sup>25</sup> *Concise Oxford English Dictionary*, 10<sup>th</sup> Ed. (USA: Oxford University Press, 2002) at p. 64.

<sup>26</sup> *The Cities Act*, c. 11.1, S.S. 2002, section 55.

police commissioners in *The Cities Act*. Nor is there any specific provision in *The Cities Act* that relates to the appointment or creation of such a board.

[42] Contrast that with the limitations imposed by *The Police Act, 1990* which eliminates any discretion for a city of more than 5,000 people. It further details the functions of a board of police commissioners and procedure and conduct for those covered by *The Police Act, 1990*. There is clearly no room nor legal opportunity for the City to exercise any discretion about procedure and conduct of a board of police commissioners. In fact, almost the entire provision for the appointment of committees or other bodies in section 55 appears to be inapplicable to the Board.

**b. Was the Moose Jaw Board of Police Commissioners prescribed in *The Local Authority Freedom of Information and Protection of Privacy Regulations*?**

[43] Even if it was determined that the Board was appointed pursuant to *The Cities Act* and thereby could satisfy the first element of section 2(f)(v) of LA FOIP, has it been “prescribed in the regulations” as required by section 2(f)(v)(B)?

[44] The LA FOIP Regulations provides in section 3(1) as follows:

For the purposes of subclause 2(f)(v) of the [*The Local Authority Freedom of Information and Protection of Privacy Act*], the bodies set out in Part I of the Appendix are prescribed as local authorities.<sup>27</sup>

[45] Part I of the Appendix to the LA FOIP Regulations lists only one circumstance that could be relevant to this investigation, namely

1. A board, commission or other body **established pursuant to *The Cities Act***.<sup>28</sup>

[emphasis added]

---

<sup>27</sup> *The Local Authority Freedom of Information and Protection of Privacy Regulations*, c. L-27.1 Reg 1, section 3(1).

<sup>28</sup> *Ibid.* Appendix 1, Part 1.

- [46] My conclusion is that when a municipality appoints such a board it does not do so “pursuant to *The Cities Act*, *The Municipalities Act* or *The Northern Municipalities Act*”. Rather, it does so by reason of and under the separate statutory authority of *The Police Act, 1990*.
- [47] Does the mere fact that the Board is formally established by means of a municipal bylaw trump the fact that the city of more than 5,000 persons is mandated by *The Police Act, 1990* to create a board of police commissioners? My view is that it does not. Therefore it is not a separate local authority. To find otherwise would ignore the unique way that the municipal police service is treated different from all other municipal boards, commissions or other bodies.
- [48] My view is that even though I have already determined that section 55 of *The Cities Act* would not apply to the Board, there are other sections of that statute that would apply. Section 5 is a general enabling power for the municipal council to pass bylaws. Section 8 sets out the jurisdiction for a city to enact bylaws. The procedure for creating bylaws is in sections 77 to 82 inclusive. My understanding of those provisions is that the way that the City takes action is by means of a bylaw. That action is the mechanism by which the City must meet its statutory obligation under *The Police Act, 1990*. I find however that the Board has not been established “pursuant to *The Cities Act*” [emphasis added] as the City has argued.
- [49] My interpretation of section 2(f)(v) of LA FOIP is that it applies to bodies created pursuant to section 55 of *The Cities Act* but not to a board that comes into being by virtue of a bylaw pursuant to section 5 of *The Cities Act* in combination with the substantive obligation in *The Police Act, 1990*, section 27. *The Police Act, 1990* is specific legislation that mandates the creation of a board of police commissioners as well as prescribing the structure, membership and function of such a board. To the extent that there is an apparent conflict between *The Cities Act*, a law of broader and more general

application and *The Police Act, 1990* my understanding of the rules of statutory interpretation is that a particular statute overrides the general law.<sup>29</sup>

[50] I therefore find that the Board is not a local authority for purposes of LA FOIP.

**3. What is the nature of the relationship between the City of Moose Jaw and the Moose Jaw Board of Police Commissioners?**

[51] My conclusion is reinforced by a substantial body of law that establishes that even though the municipality funds the municipal police service, it is not in the position of the employer of those who are part of the municipal police service. Since the turn of the last century, Canadian courts have determined that a municipality is not legally responsible for the actions of a police officer. This was determined by the Supreme Court of Canada in the case of *McCleave Estate v. Moncton (City)*. In the judgment of the Supreme Court, Sir Henry Strong quoted with approval the following statement from Chief Justice Bigelow of the Supreme Court of Massachusetts in delivering the judgment in *Buttrick v. The City of Lowell*, 1 Allen [Mass.] 172:

**Police officers can in no respect be regarded as agents or officers of the city.** Their duties are of a public nature. Their appointment is devolved on cities and towns by the legislature as a convenient mode of exercising a function of government, but this does not render them liable for their unlawful or negligent acts. The detection and arrest of offenders, the preservation of the public peace, the enforcement of the laws and other similar powers and duties with which police officers and constables are entrusted are derived from the law, and not from the city or town under which they hold their appointment. For the mode in which they exercise their powers the city or town cannot be held liable. Nor does it make any difference that the acts complained of were done in an attempt to enforce an ordinance or by-law of the city. The authority to enact by-laws is delegated to the city by the sovereign power, and the exercise of the authority gives to such enactments the same force and effect as if they had been passed directly by the legislature. They are public laws of a local and limited operation, designed to secure good order and to provide for the welfare and comfort of the inhabitants. In their enforcement, therefore, **police officers act in their public capacity, and not as agents or servants of the city.**<sup>30</sup>

[emphasis added]

---

<sup>29</sup> Driedger, Elmer, *The Composition of Legislation*, (Ottawa: Queen's Printer and Controller of Stationery, 1957), p. 126.

<sup>30</sup> *McCleave Estate v. Moncton (City)* (1902), 32 S.C.R.

[52] A more modern take on that principle is provided by an Ontario arbitrator in the case of *Toronto Police Services Board v. Toronto Police Assn. (use of Force and Equipment Grievance)* [2011] O.L.A.A. No. 65 as follows:

While arbitrators deal with many situations in the public and private sectors, policing has its own set of statutes and jurisprudence. One of the fundamental differences is that the “employer” and “employees” model is not quite adequate to understand the parties respective rights and responsibilities. The Police Services Board and the members of the bargaining unit may have rights and responsibilities under the Collective Agreement, but they also owe other duties to and are answerable to the public. **So the traditional master/servant or employer/employee model does not fit easily to the police model.** Metropolitan Toronto board of Commissioners of Police and Metropolitan Toronto Police Association, (1975) 8 O.R. (2d) 65 (C.A.) instructs that while there may be similarities between the industrial model of employment where there is a common law duty to “serve” an employer, the statutory structure for police officers is different because the duties of a police officer “are owed to the public rather than an employer and in view of the emergent situations which may arise in police work.” Further, there was recognition that a collective agreement could not “entrench or qualify public duties or responsibilities” in a way that would “subject the public interest and public safety, law and order to interests between employer and employee.” Therefore, police contracts must be read subject to the specific duties and responsibilities assigned by the Legislature to a Police Services Board, a chief of police and to police officers.<sup>31</sup>

[emphasis added]

[53] I take the Police Services Board in Toronto to be equivalent to the Board of Police Commissioners for the City.

[54] My understanding is that there is no vicarious liability on the municipality for the acts or omissions of police officers. My view is further confirmed by the Supreme Court of Canada in *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*.<sup>32</sup> In that case, the Supreme Court held that an arbitrator appointed pursuant to a collective agreement between the police service and the union of police officers had no jurisdiction to decide the dispute since the matters of police discipline and dismissal were governed by Saskatchewan’s *The Police Act, 1990*. The principle that the municipality is not

---

<sup>31</sup> *Toronto Police Services Board v. Toronto Police Assn. (use of Force and Equipment Grievance)* [2011] O.L.A.A. No. 65.

<sup>32</sup> *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners* [2000] 1 S.C.R. 360.



responsible for the actions of its police service and its members is reinforced by a number of other court decisions.<sup>33</sup>

[55] My view is further reinforced by a perusal of the website of the Saskatchewan Police Commission and material related to the Public Complaints Commission. There is no reference to LA FOIP in any of that material. The *Saskatchewan Police Commission Policy Manual* of April 2004 has a section entitled *OK 10 Release of Information* that makes no mention of LA FOIP.<sup>34</sup>

[56] I am mindful that for a board of police commissioners and a municipal police service to be subject to LA FOIP would have a number of far reaching consequences beyond whether the salary information of its employees becomes public information in the City's public accounts. This would mean the full application of Part IV of LA FOIP and the obligations to conform to the provisions for the collection, use and disclosure of personal information. This would also mean the full application of the right of citizens to make access to information requests in respect to records in the possession or under the control of the police service. Since this is the situation in virtually all other Canadian jurisdictions other than Prince Edward Island (PEI), I would view this as a welcome development. Nonetheless, my view is that this should be a clear and deliberate decision of the Legislative Assembly and it should be much more transparent to Saskatchewan residents whether LA FOIP applies to municipal police commissions and services.

[57] I must next consider whether the City had authority in Part IV of LA FOIP for what it has done with the Complainants' personal information.

**4. Has the information in question been disclosed by a local authority contrary to *The Local Authority Freedom of Information and Protection of Privacy Act*?**

---

<sup>33</sup> *re The Trade Union Act, 1944 Bruton (Applicant) v. Regina City Policemen's Association, Local No. 155 (Respondent)*, [1945] S.J. No. 62; *Bowles v. City of Winnipeg* [1919] M.J. No. 48; *Pon Yin v. The City of Edmonton, Hill and Kroning*, [1915] A.J. No. 61; *Caratozzolo v. Murdock* [1982] A.J. No. 135.

<sup>34</sup> Saskatchewan Police Commission, *Saskatchewan Police Commission Policy Manual*, available at <http://www.cpsp.gov.sk.ca/saskatchewan-police-commission>.

[58] Our customary analysis when dealing with a complaint under Part IV of LA FOIP is to first determine whether there is “personal information” and then to consider which of the three primary privacy activities is engaged, i.e. collection, use or disclosure.

[59] The definition of personal information is in section 23 and provides as follows:

**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:

...

(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;

...

(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

...

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

(a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a local authority ...<sup>35</sup>

[60] Information about the salary paid to a police officer would qualify as personal information by reason of subsections 23(1)(b), 23(1)(i), 23(1)(j) and 23(1)(k)(i). That then leads to consideration of whether subsection 23(2)(a) would apply. Section 23(2) effectively carves out certain kinds of information that would normally be personal information but by reason of the accountability that attaches to public sector organizations and expenditure of public funds is not included in the statutory definition of “personal information”. I have already found that the Board was not a local authority.

---

<sup>35</sup> *Supra* note 2 section 23.

[61] Section 24 of LA FOIP addresses the collection of personal information by a local authority. That provides as follows:

24 No local authority shall collect personal information unless the information is collected for a purpose that relates to an existing or proposed program or activity of the local authority.<sup>36</sup>

[62] The City has provided no authority for collection beyond its apparent role in providing certain administrative or personnel services to an unregulated third party.

[63] The City has confirmed that it manages the payroll function of the police service and therefore needs to collect this salary information to complete that work. One of the difficulties with municipal police commissions and police services being outside the scope of LA FOIP as discussed earlier is that there tends to be extensive sharing of personal information between police services that are outside of LA FOIP and municipal government that is subject to LA FOIP. The municipality becomes a kind of information management service provider for the municipal police service. We have encountered situations where this kind of information sharing is not well documented and is not covered by clear and comprehensive information management service agreements. In this particular case, we have been advised no such written agreement exists. A good example would be my Review Report LA-2010-002.<sup>37</sup> This leads to questions about which body has possession or control of a particular record since if it is found that the City has possession or control the record is subject to LA FOIP and if it is in the possession or control of the municipal police commission or municipal police services it is not subject to LA FOIP. The preferable remedy would be to explicitly make municipal police commissions and municipal police services subject to LA FOIP as is done in virtually all other Canadian provinces, save for PEI. In the meantime, it is essential that Saskatchewan municipalities that have a municipal police commission and a municipal police service formally address those information management service arrangements by means of contract.

---

<sup>36</sup> *Supra* note 2 section 24.

<sup>37</sup> SK OIPC, Report LA-2010-02, available at <http://www.oipc.sk.ca/Reports/LA-2010-002.pdf>.

[64] On the facts of this investigation, the “use” of the Complainants’ personal information does not appear to be in issue.

[65] That leaves us with the element of “disclosure” in Part IV of LA FOIP. There can be no doubt that the City released the remuneration information in question when it published its Public Accounts in 2006 for the 2005 calendar year. This would qualify as a ‘disclosure’ since the information was released to third parties under circumstances in which the City would have no control over what those third parties might do with the information.

[66] The relevant provision in Part IV of LA FOIP is section 28. That provides as follows:

**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.

(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

(a) for the purpose for which the information was obtained or compiled by the local authority or for a use that is consistent with that purpose;

...

(i) for the purpose of complying with:

(i) an Act or a regulation;

(ii) an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada; or

(iii) a treaty, agreement or arrangement made pursuant to an Act or an Act of the Parliament of Canada;

...

(p) where the information is publicly available;

...

(r) for any purpose in accordance with any Act or regulation that authorizes disclosure; or

(s) as prescribed in the regulations.<sup>38</sup>

---

<sup>38</sup> *Supra* note 2 section 28.

- [67] Since there was apparently no consent from the Complainants, the City is required to justify its disclosure by means of one of the subsections in section 28(2). I find that the possible subsections that may assist the City would be section 28(2)(a), 28(2)(i), 28(2)(p), 28(2)(r) or 28(2)(s). I will deal with each sequentially below.
- [68] Section 28(2)(a) – The purpose for the City collecting this personal information would presumably be for the management of police personnel and payroll responsibilities as an information management service provider and not for subsequent publication in public accounts.
- [69] Section 28(2)(i) – The City relied on subsection 156(2) of *The Cities Act* insofar as it particularizes the information that must be included in public accounts. The City argued that it must publish “the remuneration paid to each employee...of any body established by council that receives the majority of its funds from the city.”<sup>39</sup> I repeat and incorporate by reference my earlier analysis of *The Cities Act* and section 156 in particular and *The Cities Regulations*, section 9 and 11 in particular.
- [70] Section 28(2)(p) – The personal information of the Complainants would not have been publicly available but for the public accounts of the City.
- [71] Section 28(2)(r) – The only Act or regulations that has been argued or that might authorize disclosure of the Complainants’ personal information would be *The Cities Act* or *The Cities Regulations*. For the reasons and analysis above, I find that this subsection is not applicable.
- [72] There is a statutory qualification to the content of any municipality’s public accounts. I refer specifically to section 11 of *The Cities Regulations* which provides as follows:

---

<sup>39</sup> This was a paraphrase by the City of Moose Jaw of section 156(2)(b)(iii) of *The Cities Act*, c. 11.1, S.S. 2002 in its submission to the SK OIPC. Section 156(2)(b)(iii) states: “the remuneration paid to each employee and member of any other body established by council that receives the majority of its funds from the city”.

11 If the receipt of a payment by a person is to be kept confidential by law, the payment shall not be reported in the city's public accounts in any manner that will or might disclose the identity of the recipient of the payment.<sup>40</sup>

[73] For section 11 to apply, the qualifying circumstance is that the receipt of payment "is to be kept confidential by law". "Law" or "by law" is not defined in *The Financial Administration Act, 1993*<sup>41</sup> nor is it defined in *The Interpretation Act, 1995*. I take this to be sufficiently expansive to include the common law and judicial precedent but it must in any event include statutes of Saskatchewan.

[74] In this case is the receipt of a payment by a police commission employee "to be kept confidential by law"? There is no requirement for the publication of salary of police officers in *The Police Act, 1990*.

[75] I therefore find that the salary information is not caught by section 9 of *The Cities Regulations* and the City cannot rely on section 28(2)(r) of LA FOIP. This also answers the question posted at paragraph [24]. Section 3(1)(b) would not apply.

[76] Section 28(2)(s) – I find that none of the 13 enumerated circumstances in LA FOIP Regulations, section 10 are applicable in this case.

[77] In the result, I find that the disclosure by the City of the Complainants' personal information violated section 28 of LA FOIP.

#### **IV FINDINGS**

[78] I have already found that the exclusions in section 3 and 4 of *The Local Authority Freedom of Information and Protection of Privacy Act* would not apply. Consequently, *The Local Authority Freedom of Information and Protection of Privacy Act* would apply and more particularly Part IV of *The Local Authority Freedom of Information and*

---

<sup>40</sup> *Supra* note 4 section 11.

<sup>41</sup> *The Financial Administration Act, 1993*, S.S. 1993, c. F-13.4.

*Protection of Privacy Act* that defines “personal information” and then prescribes the rules governing the collection, use and disclosure of that personal information.

- [79] In summary, if the Complainants were employees of the City of Moose Jaw, clearly the combination of section 23(2)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* and section 156 of *The Cities Act* would justify publication of identifying information including names, position and salary in the City of Moose Jaw’s public accounts. The Complainants were not employees of the City of Moose Jaw. They were employees of a different organization, the Moose Jaw Board of Police Commissioners.
- [80] If the Moose Jaw Board of Police of Commissioners qualified as a local authority for purposes of *The Local Authority Freedom of Information and Protection of Privacy Act*, then the publication of the identifying information in public accounts would also be authorized and appropriate. I find however that to be a “local authority”, the Moose Jaw Board of Police Commissioners would need to be appointed pursuant to *The Cities Act* and be prescribed by *The Local Authority Freedom of Information and Protection of Privacy Regulations*. I find that the Moose Jaw Board of Police Commissioners is established not pursuant to *The Cities Act* but rather pursuant to *The Police Act, 1990* and consequently neither of the two elements in section 2(f)(v) exists.
- [81] If the Moose Jaw Board of Police Commissioners is not a local authority, then the City of Moose Jaw can only disclose the Complainants’ identifying personal information in accordance with *The Local Authority Freedom of Information and Protection of Privacy Act*. I have determined, however, there was no authority in *The Local Authority Freedom of Information and Protection of Privacy Act* for the disclosure. That conclusion follows my analysis of section 28 of *The Local Authority Freedom of Information and Protection of Privacy Act*.
- [82] If the receipt of a payment to one of those Complainants “is to be kept confidential by law” as I have determined it must be, given the anomalous treatment of municipal police services under *The Local Authority Freedom of Information and Protection of Privacy Act*

*Act*, then the identity of the recipient must not be disclosed in the City of Moose Jaw's public accounts to conform with section 11 of *The Cities Regulations*.

- [83] Given the special role and the unusual legal status of the Moose Jaw Board of Police Commissioners, and in view of our office's observation that such boards have not been regarded as local authorities and subject to *The Local Authority Freedom of Information and Protection of Privacy Act* over the last 19 years, my view is that, if the court determines that my analysis is incorrect, then the Legislative Assembly should amend the legislation to explicitly characterize these boards as a "local authority".
- [84] As I have noted on other occasions, a curiosity of *The Local Authority Freedom of Information and Protection of Privacy Act* is that, unlike all similar laws across Canada, except for Prince Edward Island, municipal police services are for some reason not explicitly subject to *The Local Authority Freedom of Information and Protection of Privacy Act*. Municipal police services in every other province in western Canada are subject to access to information and privacy laws like all other public sector bodies in British Columbia, Alberta and Manitoba. I have urged the Government in the past to ensure that municipal police services are explicitly subject to such a law. Such legislative reform would also have the beneficial effect of permitting the publication of the salary information in question in this report.
- [85] This issue of scope of *The Local Authority Freedom of Information and Protection of Privacy Act* warrants further consideration by our Legislative Assembly for a couple of reasons: (1) A municipal police service will be one of the major public service organizations in any community with a proportionately large share of the municipality's budget and in the course of its work will be viewed by residents as an important core service in the community. (2) In the course of its work, the municipal police service will routinely make decisions and provide services that directly impact the residents of the community. (3) When the Royal Canadian Mounted Police provide contract municipal policing, the residents of that municipality have the full benefit of the federal *Access to Information Act* and the federal *Privacy Act* but those are remedies not available to Saskatchewan residents in municipalities where there is a municipal police service



instead of the Royal Canadian Mounted Police. This creates an awkward kind of two tiered system when it comes to the information rights of citizens. If the Royal Canadian Mounted Police provide municipal policing, citizens can make a formal access request to records in the possession or control of the Royal Canadian Mounted Police. They can also make privacy complaints to the Royal Canadian Mounted Police if they believe their privacy has been breached by the federal police force. In either case a dissatisfied citizen has the statutory right to appeal to the Privacy Commissioner of Canada or the Information Commissioner of Canada. Those federal oversight offices have broad powers of investigation. By contrast, the citizen who wishes to request records in the possession or control of their municipal police service has no statutory right to rely on and no right to appeal to the Information and Privacy Commissioner office. Similarly, the citizen in that situation has no right to have their privacy complaint against their municipal police service investigated by the Information and Privacy Commissioner's Office. The amendment I would recommend would make each of the municipal police services and the municipal board of police commissions a separate local authority.

[86] I thank both the two Complainants and the City of Moose Jaw for their patience and cooperation throughout this protracted investigation. I have no doubt that the City of Moose Jaw's action in publishing the salary information in question was motivated by a genuine commitment to operate in a fashion that was transparent to its ratepayers and citizens.

## **VI RECOMMENDATIONS**

[87] That so long as the Moose Jaw Board of Police Commissioners and Moose Jaw Police Service are not treated as local authorities and subject to *The Local Authority Freedom of Information and Protection of Privacy Act*, the City of Moose Jaw should not publish in its public accounts the salary information of employees or officers of the Moose Jaw Board of Police Commissioners.

- [88] That the Legislative Assembly should clarify whether municipal board of police commissioners and municipal police services are or are not “local authorities” for purposes of *The Local Authority Freedom of Information and Protection of Privacy Act*.
- [89] If it is not the intention of the Legislative Assembly that municipal boards of police commissioners and municipal police services be made subject to *The Local Authority Freedom of Information and Protection of Privacy Act*, that it consider amendment of *The Cities Act* and *The Police Act, 1990* to enable the publication of salary information of employees of those municipal boards of police commissioners.
- [90] That the Ministry of Justice and Attorney General provide public information that allows members of the public to more easily determine which organizations qualify as “local authority” subject to *The Local Authority Freedom of Information and Protection of Privacy Act*.

Dated at Regina, in the Province of Saskatchewan, this 14th day of March, 2012.

---

R. GARY DICKSON, Q.C.  
Saskatchewan Information and Privacy  
Commissioner