



## **REVIEW REPORT 004-2020**

### **City of Moose Jaw**

**January 19, 2021**

#### **Summary:**

The Applicant submitted an access to information request to the City of Moose Jaw (City). The City provided the Applicant with access to 130 pages of records, but also denied the Applicant access to two records pursuant to subsections 14(1)(d), (f), (k), (k.2), 21(c), and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant appealed to the Commissioner by indicating that they had not received all the records they requested. The Commissioner found that subsections 21(c) and 28(1) of LA FOIP applied to some of the withheld records. The Commissioner also found that the City had made reasonable efforts to locate the records responsive to the Applicant's access request. For the first withheld record, the Commissioner recommended that the City withhold the personal information of a third party pursuant to subsection 28(1) of LA FOIP. For the second withheld record, the Commissioner recommended that the City withhold the bodies of the emails pursuant to subsection 21(c) of LA FOIP, but then disclose the remainder of the emails. He also recommended that the City ensure it is in compliance with section 23.1 of LA FOIP, which includes ensuring regular backups are completed so that if there is a system failure, backups can be used to restore data that may have been lost.

#### **I BACKGROUND**

[1] On November 2, 2019, the City of Moose Jaw (City) received the following access to information request:

9 years going back for records on bylaw enforcement and or complaint dealing with I [sic] or residence of [street address], Moose Jaw, SK [postal code]

- [2] In a letter dated December 16, 2019, the City responded to the Applicant. The City provided the Applicant with 130 pages of records. It also indicated that, “[it] cannot be confirmed or denied if other records exist.”
- [3] On January 7, 2020, the Applicant requested a review by my office. The Applicant indicated that they had not received all the records they requested, including the “actual complaints”.
- [4] On January 14, 2020, my office notified both the City and the Applicant that it would be undertaking a review.
- [5] In its submission to my office, the City indicated it would be relying on subsections 14(1)(d), (f), (k), 21(c), 23(1) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

## **II RECORDS AT ISSUE**

- [6] The City entitled the records at issue as “Attachment I” and “Attachment II”.
- [7] Attachment I is three pages. The first two pages are an email from the City to the Chief of Police of the Moose Jaw Police Service. The third page is a photocopy of a page from the daytimer of a City employee. The City applied subsections 14(1)(d), (f), and (k) and 28(1) of LA FOIP to Attachment I.
- [8] Attachment II is two-pages of an email exchange between a City Bylaw Enforcement Officer and the City’s legal counsel. The City applied subsections 14(1)(d), (k.2), and 21(c) of LA FOIP to Attachment II.

## **III DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction?**

[9] The City qualifies as a “local authority” as defined by subsection 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to review this matter.

**2. Is the City relying on subsection 7(4) of LA FOIP?**

[10] Subsection 7(4) of LA FOIP provides:

7(4) If an application is made with respect to a record that is exempt from access pursuant to section 14, 20 or 21 or subsection 28(1), the head may refuse to confirm or deny that the record exists or ever did exist.

[11] When relying on subsection 7(4) of LA FOIP, a local authority must:

- 1) Be able to demonstrate that the records (if they existed) would qualify for exemption under the particular exemption(s) it is citing; and
- 2) Explain how disclosing the existence of records (if they existed) could reasonably compromise what it is protecting.

[12] On September 30, 2020, the City explained to my office that it had completed a comprehensive search for responsive records, but could not be absolutely certain that there were no other records that may exist that were not located in its search. Later in this Report, I will discuss this matter further in my analysis of the City’s search efforts.

[13] The City confirmed that it was okay with confirming the existence of the records at issue (described in Part II of this Report). I find that the City is no longer relying on subsection 7(4) of LA FOIP.

[14] I recommend that the City implement procedures so that when it receives access requests similar to the one submitted by the Applicant, it would respond to such requests pursuant to subsections 7(2) and 7(3) of LA FOIP, instead of subsection 7(4) of LA FOIP.

**3. Did the City properly apply subsection 28(1) of LA FOIP?**

[15] Where records contain the personal information (as defined by subsection 23(1) of LA FOIP) of a third party, then a local authority may rely on subsection 28(1) of LA FOIP to withhold such information. Subsection 23(1)(e) of LA FOIP defines “personal information” as including the following:

**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:

...

(e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;

[16] Subsection 28(1) of LA FOIP provides:

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

[17] The City applied subsection 28(1) of LA FOIP to Attachment I. As detailed in the “Records at Issue” section of this Report, the first two pages of Attachment I are an email from the City to the Chief of Police of the Moose Jaw Police Service. The body of the email contains a personal address of an individual who is not the Applicant (in other words, a third party). I find that the personal address of this individual qualifies as personal information as defined by subsection 23(1)(e) of LA FOIP. As such, I recommend that the City withhold the personal address of the individual pursuant to subsection 28(1) of LA FOIP.

[18] Further, the third page of Attachment I is a photocopy of a page from the daytimer of a City employee. This page contains the personal address and telephone number of the same individual noted above who is not the Applicant. I find that such information qualifies as personal information as defined by subsection 23(1)(e) of LA FOIP. As such, I recommend that the City withhold the personal address and telephone number of the individual pursuant to subsection 28(1) of LA FOIP.

[19] The remainder of the information in the three pages of Attachment I does not qualify as personal information as defined by subsection 23(1) of LA FOIP. I will consider if the remainder of the information in Attachment I under the other exemptions cited by the City.

**4. Did the City properly apply subsection 14(1)(f) of LA FOIP to Attachment I?**

[20] The City applied subsection 14(1)(f) of LA FOIP to Attachment I. Subsection 14(1)(f) of LA FOIP provides as follows:

**14(1)** A head may refuse to give access to a record, the release of which could:

...

(f) disclose the identity of a confidential source of information or disclose information furnished by that source with respect to a lawful investigation or a law enforcement matter;

[21] My office uses the following test to determine if subsection 14(1)(f) of LA FOIP applies to a record:

1. Could the information disclose the identity of a confidential source?
2. Could the disclosure reveal information that was provided by the confidential source with respect to a lawful investigation or a law enforcement matter?

[22] I will analyze each part of the test.

***1. Could the information disclose the identity of a confidential source?***

[23] Page 60 of Chapter 4 of my office's resource *Guide to FOIP* (updated February 4, 2020) (Guide to FOIP) provides that the term "identity" includes the name and any identifying characteristics, symbols and numbers relating to a source. A "confidential source" is someone who has provided the assurance that their identity will remain secret. There must be evidence of the circumstances in which the information was provided to establish whether the source is confidential. The local authority should establish that the source of the information qualifies as a confidential source.

[24] In its submission, the City did not offer any arguments for its application of subsection 14(1)(f) of LA FOIP to Attachment I. On the face of the record, I cannot determine if a person has been provided the assurance that their identity will remain secret. As such, I cannot determine there is a “confidential source”. I find that the first part of the test is not met. Since the first part of the test is not met, I do not have to consider if the second part of the test is met. I find that the City has not demonstrated that subsection 14(1)(f) of LA FOIP applies to Attachment I.

**5. Did the City properly apply subsection 14(1)(k) of LA FOIP to Attachment I?**

[25] The City applied subsection 14(1)(k) of LA FOIP to Attachment I. Subsection 14(1)(k) of LA FOIP provides:

**14(1)** A head may refuse to give access to a record, the release of which could:

...

(k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

[26] The two-part test that can be applied is as follows:

1. Is there a law enforcement matter involved?
2. Does one of the following exist?
  - a) Could the release of the information interfere with a law enforcement matter?
  - b) Could the release of information disclose information with respect to a law enforcement matter?

[27] I will consider each part of the test.

***1. Is there a “law enforcement matter” involved?***

[28] Pages 74 to 75 of Chapter 4 of my office’s Guide to FOIP provides that “law enforcement” includes:

- Policing, including criminal intelligence operations, or

- Investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment.

[29] In its submission, the City indicated that it requested advice from the Chief of Police of the Moose Jaw Police Service regarding, “the potential of a law enforcement matter”. The potential of a law enforcement matter is not in itself a law enforcement matter. As such, I find that the first part of the two-part test is not met. Therefore, there is no need to consider the second part of the two-part test. I find that the City has not demonstrated that subsection 14(1)(k) of LA FOIP applies to Attachment I.

**6. Did the City properly apply subsection 14(1)(d) of LA FOIP to Attachments I and II?**

[30] The City applied subsection 14(1)(d) of LA FOIP to Attachment I and Attachment II. Subsection 14(1)(d) of LA FOIP provides as follows:

**14(1)** A head may refuse to give access to a record, the release of which could:

...

(d) be injurious to the local authority in the conduct of existing or anticipated legal proceedings;

[31] My office uses the following two-part test when determining if subsection 14(1)(d) of LA FOIP applies to a record:

1. Do the proceedings qualify as existing or anticipated legal proceedings?
2. Could the disclosure of the record be injurious to the local authority in the conduct of the legal proceedings?

[32] For the first part of the test, I find there are existing legal proceedings. The Applicant provided my office with a copy of the 130pages of records that were provided to them by the City. Within those records is a summons for the Applicant to appear before the presiding judge of the Provincial Court of Saskatchewan.

[33] For the second part of the test, there must be objective grounds for believing that disclosing the information could result in injury. “Injury” implies damage or detriment. Subsection 14(1)(d) of LA FOIP is designed to protect the local authority from harm in its existing or anticipated legal proceedings. In a review with my office, the local authority should describe the harm in detail to support its application of subsection 14(1)(d) of LA FOIP. Local authorities should not assume that the harm is self-evident on the face of the records.

[34] In its submission, the City asserted in its submission that the disclosure of Attachments I and II would be injurious to the City. It said:

Further, section 14(1)(d) ...[was] applied as the City is of the position that the release of the record is injurious to the local authority in the conduct of existing or anticipated legal proceedings...

[35] Based on the above, the City has only asserted that injury would come to it if Attachments I and II were released. However, it has not provided detail of the injury. On the face of both Attachments I and II, I cannot determine what injury would come to the City if Attachments I or II were released. Section 51 of LA FOIP provides:

**51** In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned.

[36] I find that the City has not demonstrated that subsection 14(1)(d) of LA FOIP applies to Attachments I and II.

**7. Did the City properly apply subsection 14(1)(k.2) of LA FOIP to Attachment II?**

[37] The City applied subsection 14(1)(k.2) of LA FOIP to Attachment II. Subsection 14(1)(k.2) of LA FOIP provides as follows:

**14(1)** A head may refuse to give access to a record, the release of which could:

...  
(k.2) reveal any information relating to or used in the exercise of prosecutorial discretion;



[38] As described in the “Records at Issue” section of this Report, Attachment II is an email exchange between a City Bylaw Enforcement Officer and the City’s legal counsel. Subsection 2(u)(ii) of *The Summary Offences Procedure Act, 1990* (SOPA) defines “prosecutor” as follows:

2 In this Act:

...

(u) “**prosecutor**” means:

...

(ii) with respect to a bylaw, anyone authorized by a municipality or by a body corporate mentioned in subclauses (a)(ii) to (iv) to prosecute bylaws on its behalf;

[39] Section 337 of *The Cities Act* provides that a bylaw enforcement officer may represent the City in the prosecution of anyone who is charged with a contravention of a bylaw. It provides as follows:

**337(1)** A council may appoint any bylaw enforcement officers that the council considers necessary and define their duties and fix their remuneration.

(2) Bylaw enforcement officers appointed pursuant to the authority of subsection (1) may represent the city before a justice of the peace or provincial court judge in the prosecution of anyone who is charged with a contravention of a bylaw.

[40] Based on the above, the City is the prosecutor and as such could exercise prosecutorial discretion. Bylaw enforcement officers appointed pursuant to subsection 337(1) of *The Cities Act* may act on behalf of the City as a prosecutor and may from time exercise prosecutorial discretion.

[41] Subsection 20(1)(g) of Alberta’s *Freedom of Information and Protection of Privacy Act* (AB FOIP) is similar to subsection 14(1)(k.2) of LA FOIP. Subsection 20(1)(g) of AB FOIP provides:

**20(1)** The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

(g) reveal any information relating to or used in the exercise of prosecutorial discretion;

[42] In Order F2017-44, the Office of the Information and Privacy Commissioner of Alberta (AB IPC) provided that in order for subsection 20(1)(g) of AB FOIP to apply, the public body must establish:

1. prosecutorial discretion was exercised in matters within the prosecutor's authority concerning the prosecution of offences,
2. there is information that relates to or was used in this exercise of that discretion, and
3. disclosure of the information could reasonably be expected to reveal this information.

[43] For the purpose of the analysis, I adopt, but adapt Alberta's three-part test to the following:

1. prosecutorial discretion was exercised in matters within the prosecutor's authority concerning the prosecution of offences,
2. there is information that relates to or was used in this exercise of that discretion, and
3. disclosure of the information could reveal this information.

[44] In its submission, the City said the following:

Further, section 14(1)...(k.2) were applied as the City is of the position that the release of the record ... could reveal any information relating to or used in the exercise of prosecutorial discretion.

[45] The City's submission does not explain how the information contained within Attachment II relates to or was used in the exercise of prosecutorial discretion. On the face of the email exchange, I cannot determine what information relates to or was used in the exercise of prosecutorial discretion. I find that the City has not demonstrated that subsection 14(1)(k.2) of LA FOIP applies to Attachment II.

**8. Did the City properly apply subsection 21(c) of LA FOIP to Attachment II?**

[46] The City applied subsection 21(c) of LA FOIP to Attachment II. Subsection 21(c) of LA FOIP provides as follows:

**21** A head may refuse to give access to a record that:

...

(c) contains correspondence between legal counsel for the local authority and any other person in relation to a matter involving the provision of advice or other services by legal counsel.

[47] My office uses the following two-part test to determine if subsection 21(c) of LA FOIP applies:

1. Is the record a correspondence between the local authority's legal counsel and any other person?
2. Does the correspondence relate to a matter that involves the provision of advice or other services by the agent or legal counsel?

[48] I will analyze each part of the test.

***1. Is the record a correspondence between the local authority's legal counsel and any other person?***

[49] Page 263 of Chapter 4 of my office's Guide to FOIP provides that "correspondence" means letters sent or received or an interchange of written communication.

[50] Attachment II is an email exchange between the City's legal counsel and a City Bylaw Enforcement Officer. Based on the Law Society of Saskatchewan's website, the City's legal counsel is listed as an active member. As such, I find that the first part of the test is met.

***2. Does the correspondence relate to a matter that involves the provision of advice or other services by the agent or legal counsel?***

[51] Page 264 of Chapter 4 of my office's Guide to FOIP provides that "legal advice" includes a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications. Further, it provides that "legal service" includes any law-related service performed by a person licensed to practice law.

[52] In its submission, the City said the following:

Attachment II relates to the preparation of legal proceedings against the Applicant. The email discussion is between the City's Bylaw Enforcement Officer and the City's Legal Counsel.

[53] Based on a review of the email exchange, it appears that the City's legal counsel is assisting the City Bylaw Enforcement Officer with preparing for legal proceedings against the Applicant. I find that subsection 21(c) of LA FOIP applies to Attachment II.

[54] In past reviews by my office, I have recommended that public bodies release innocuous portions of email exchanges such as the email time stamp, sender, recipient, subject lines, and email signatures. This would be in keeping with section 8 of LA FOIP, which provides:

**8** Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.

[55] I recommend that the City withhold the bodies of the emails pursuant to subsection 21(c) of LA FOIP in Attachment II, but disclose the remainder of the emails to the Applicant.

**9. Did the City make a reasonable effort to search for records?**

[56] As noted in the background section of this Report, the Applicant was provided with 130 pages of records. However, they indicated they did not receive all of the records they requested, including the "actual complaints".

[57] Section 5 of LA FOIP provides an individual's right to records that are in the possession or control of a local authority. This section is clear that access to records must be given if

they are in the possession or control of a local authority, subject to any exemptions under Part III of LA FOIP. Section 5 of LA FOIP provides:

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.

[58] LA FOIP does not require a local authority to prove with absolute certainty that records responsive to an access to information request do not exist. However, it must demonstrate that it has conducted a reasonable search in order to locate the records. The focus of my office's review of search efforts is whether or not the local authority conducted a reasonable search. A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records related to the access request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.

[59] When a local authority is demonstrating its search efforts, the following can be included in the submission to outline its search strategy:

- For personal information requests – explain how the individual is involved with the local authority (i.e. client, employee, former employee etc.) and why certain departments/divisions/branches were included in the search.
- For general requests – tie the subject matter of the request to the departments/divisions/branches 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
  - subject
- 
- Consider providing a copy of your organization’s record schedule and screen shots of the electronic directory (folders & subfolders).
  - If the record has been destroyed, provide copies of record schedules and/or destruction certificates.
  - Explain how you have considered records stored off-site.
  - Explain how records that may be in the possession of a third party, but in the local authority’s control have been searched such as a contractor or information management service provider.
  - 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. For more on this, see my office’s resource, *Using Affidavits in a Review with the IPC* available on my office’s website.

[60] The above list is meant to be a guide. It is not an exhaustive list of what could be considered by my office in a review. Providing the above details is not a guarantee that my office will find that the search efforts were reasonable. Each case will require different search strategies and details depending on the records requested.

[61] The City explained to my office that its practice is that records specific to a file will be printed and stored in a filing cabinet and/or electronic stored in the City’s SharePoint site. The basis for this practice is set out in its Bylaw No. 5529, *The Records Retention and*

*Disposal Bylaw.* This bylaw establishes a records retention and disposal bylaw that is required by *The Cities Act*. The bylaw speaks to what records must be retained (in accordance with a schedule attached to the bylaw), what records can be destroyed, and how they are to be destroyed.

[62] Since the Applicant was concerned about the “actual complaints”, my office asked the City about records that may contain such information. The City explained that up until the end of 2019, the City had used a “Request for Service” (RFS) program to track enquiries and complaints from the initial report all the way to resolution. The City admitted that the RFS system was not the most efficient system. It indicated that in the last couple of years, the RFS system began to crash. As such, the City could not confirm nor deny if the records stored within the RFS system related to the Applicant’s access request had survived the RFS system. It noted that the time frame of the Applicant’s access request is from 2010 to 2019. If electronic records were stored within its RFS system, the records may have been lost.

[63] The retention of records that document the decisions made by the City is important. This is so that the City can be accountable to citizens especially if citizens are the subject of an investigation. Subsection 23.1 of LA FOIP requires that the City establish administrative, technical and physical safeguards that protect against the loss of personal information in its control. It says:

**23.1** Subject to the regulations, a local authority shall establish policies and procedures to maintain administrative, technical and physical safeguards that:

(a) protect the integrity, accuracy and confidentiality of the personal information in its possession or under its control;

(b) protect against any reasonably anticipated:

(i) threat or hazard to the security or integrity of the personal information in its possession or under its control;

(ii) loss of the personal information in its possession or under its control; or

(iii) unauthorized access to or use, disclosure or modification of the personal information in its possession or under its control; and

(c) otherwise ensure compliance with this Act by its employees.

[64] While I appreciate the City being forthcoming about the deficiency of its RFS system, it is cold comfort to citizens whose information has been lost due to the deficiencies of the RFS system. The City is no longer using the old RFS system. It indicated to my office that within the first quarter of 2020, it had begun using a new request for service system where all citizen complaints/enquiries are linked to a City email account. Going forward, I recommend that the City ensure it is in compliance with section 23.1 of LA FOIP, which includes ensuring regular backups are completed so that if there is a system failure, backups can be used to restore data that may have been lost.

[65] Since the City was not sure that all responsive records that may have been stored in the old RFS system had been accounted for, it asserted that it attempted to complete searches for records of potential complaints it may have received for the time period specified by the Complainant. The City provided my office with the following details of its search efforts.

Email accounts and electronic files

[66] The Director of Planning & Development Services indicated that two searches of email accounts and electronic files for responsive records in the department were conducted. To set the search parameters of the first search, the City used the following terms:

- Applicant's name,
- Address of Applicant's property,
- "Bylaw Enforcement", and
- 2010 to 2019.

[67] To set the search parameters of the second search, the City used the following terms:

- Applicant's name,
- Address of Applicant's property,
- 2010 to 2019,
- Bylaw complaints, and
- Call logs.



[68] The City also noted that the two Bylaw Enforcement Officers who were mainly engaged in the enforcement matter involving the Applicant were no longer employed by the City. Therefore, it requested that its Information and Technology (IT) Department conduct a search of the former employees' email accounts. It used the same search parameters described above. However, no responsive records from the search of the emails were located.

Searches by Current Bylaw Enforcement Officers

[69] The City currently has two Bylaw Enforcement Officers, herein referred to as Bylaw Enforcement Officer A and Bylaw Enforcement Officer B. Bylaw Enforcement Officer A has been with the City since 2018 and conducted the majority of the search for records. Bylaw Enforcement Officer B has been with the department since October 2019, so they had very limited engagement with the enforcement matter.

[70] Bylaw Enforcement Officer A's search efforts were as follows:

- Manual search of archived paper records located in the basement of City Hall;
- Searched through hard copy records located within the Bylaw Enforcement Office, including letters, photos and orders issued to the Applicant;
- A search on the City's SharePoint site, which resulted in letters, photos and orders issued to the Applicant;
- A search through their own work email account, which resulted in no responsive records; and
- A search through the electronic call log for records of information pertaining to the Applicant's property. Search terms including the Applicant's first and last name and the location of the property. No records were located.

[71] Based on the above details, the City located responsive records in either its hard copy records located within the Bylaw Enforcement Office and/or the City's SharePoint site. This corresponds with its description of its records management practices, which is based on its Bylaw No. 5529. However, I note that the City's search efforts went beyond the hard copy records in the Bylaw Enforcement Office and the City's SharePoint site, including searching through archived paper records, email accounts, and electronic call logs.

[72] Based on the information provided to my office, I find that the City has made reasonable efforts to locate records responsive to the Applicant's access request.

#### **IV FINDINGS**

[73] I find that the City is not relying on subsection 7(4) of LA FOIP.

[74] I find that the personal address of an individual in the body of the email in Attachment I qualifies as personal information as defined by subsection 23(1)(e) of LA FOIP.

[75] I find that the personal address and telephone number of an individual on the third page of Attachment I qualifies as personal information as defined by subsection 23(1)(e) of LA FOIP.

[76] I find that the City has not demonstrated that subsection 14(1)(f) of LA FOIP applies to Attachment I.

[77] I find that the City has not demonstrated that subsection 14(1)(k) of LA FOIP applies to Attachment I.

[78] I find that the City has not demonstrated that subsection 14(1)(d) of LA FOIP applies to Attachments I and II.

[79] I find that the City has not demonstrated that subsection 14(1)(k.2) of LA FOIP applies to Attachment II.

[80] I find that subsection 21(c) of LA FOIP applies to Attachment II.

[81] I find that the City has made reasonable efforts to locate records responsive to the Applicant's access request.

## **V RECOMMENDATIONS**

- [82] I recommend that the City implement procedures so that when it receives access requests similar to the one submitted by the Applicant, it would respond to such requests pursuant to subsections 7(2) and 7(3) of LA FOIP, instead of subsection 7(4) of LA FOIP.
- [83] I recommend that the City withhold the personal address of the third party in the body of the email in Attachment I, and withhold the personal address and personal telephone number of the third party on the third page of Attachment I pursuant to subsection 28(1) of LA FOIP, but then release the remainder of the record to the Applicant.
- [84] I recommend that the City withhold the bodies of the emails pursuant to subsection 21(c) of LA FOIP in Attachment II, but disclose the remainder of the emails to the Applicant.
- [85] I recommend that the City ensure it is in compliance with section 23.1 of LA FOIP, which includes ensuring regular backups are completed so that if there is a system failure, backups can be used to restore data that may have been lost.

Dated at Regina, in the Province of Saskatchewan, this 19<sup>th</sup> day of January, 2021.

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