



REVIEW REPORT 010-2018

South East Cornerstone Public School Division #209

July 6, 2018

Summary: The Applicant was seeking parental complaints and witness statements regarding an incident from the South East Cornerstone Public School Division #209 (Cornerstone). Cornerstone withheld the records pursuant to subsections 14(1)(c), 20, 28(1), 30(2) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found that subsection 14(1)(c) and section 20 of LA FOIP did not apply to the record. He found that subsection 30(2) of LA FOIP applied to only certain portions of the interview notes, but not the written complaints. Finally, he found only portions of the record qualified as personal information of identifiable individuals other than the Applicant. The Commissioner recommended severing portions of the record that should be withheld pursuant to subsections 28(1) and 30(2) of LA FOIP and releasing the rest to the Applicant.

I BACKGROUND

- [1] On November 14, 2017, the South East Cornerstone Public School Division #209 (Cornerstone) received an access to information request for “copies of all witness statements taken and all investigative notes produced by [name of Investigator A] and [name of Investigator B] during interviews with individuals [in specific time frame] in regards to [a specific event] and parental complaints about [name of Applicant]”.
- [2] On December 14, 2017, Cornerstone responded to the request indicating that it provided investigative notes related to the interview of the Applicant. It also provided copies of investigative notes from interviews of some individuals who provided consent to share the

notes; however, it severed certain passages pursuant to subsection 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The response also informed the Applicant that the remainder of the interview notes and the information about the complaints from parents were being withheld in full pursuant to subsections 28(1) and 30(2) of LA FOIP.

- [3] The Applicant was dissatisfied with Cornerstone's response and, on January 17, 2018, requested a review from my office. On January 22, 2018, my office provided notification to both the Applicant and Cornerstone of my intention to undertake a review.

II RECORDS AT ISSUE

- [4] During the course of the review, Cornerstone indicated that it also has applied subsection 14(1)(c) and section 20 of LA FOIP to the records it withheld in full. The records at issue are as follows:

#	Pages	Description	Severing	Exemptions Applied
Interview Notes of Investigator A				
1	1-3	Individual 1	Withheld in full	14(1)(c), 20, 28(1), 30(2)
2	4-6	Individual 2	Withheld in full	14(1)(c), 20, 28(1), 30(2)
3	7-10	Individual 3	Withheld in full	14(1)(c), 20, 28(1), 30(2)
4	11-17	Individual 4	Withheld in full	14(1)(c), 20, 28(1), 30(2)
5	18-26	Individual 5	Withheld in full	14(1)(c), 20, 28(1), 30(2)
5a	26-28	Written complaint – Individual 5	Withheld in full	14(1)(c), 20, 28(1), 30(2)
6	29-31	Individual 6	Withheld in full	14(1)(c), 20, 28(1), 30(2)
7	32-34	Individual 7	Withheld in full	14(1)(c), 20, 28(1), 30(2)
8	35-43	Individual 8	Withheld in full	14(1)(c), 20, 28(1), 30(2)
9	44-46	Individual 9	Withheld in full	14(1)(c), 20, 28(1), 30(2)
10	47-52	Individual 10	Withheld in full	14(1)(c), 20, 28(1), 30(2)
11	53-58	Individual 11	Withheld in full	14(1)(c), 20, 28(1), 30(2)
12	59	Individual 12	Withheld in full	14(1)(c), 20, 28(1), 30(2)
Interview Notes of Investigator B				
13	60-70	Individuals 1, 2 and 3	Withheld in full	14(1)(c), 20, 28(1), 30(2)
14	71-75	Individual 4	Withheld in full	14(1)(c), 20, 28(1), 30(2)
15	76-83	Individual 5	Withheld in full	14(1)(c), 20, 28(1), 30(2)
16	84-85	Individual 6	Withheld in full	14(1)(c), 20, 28(1), 30(2)
17	86-89	Individual 7	Withheld in full	14(1)(c), 20, 28(1), 30(2)
18	90-95	Individual 8	Withheld in full	14(1)(c), 20, 28(1), 30(2)
19	96-98	Individual 9	Withheld in full	14(1)(c), 20, 28(1), 30(2)
20	99-104	Individual 10	Withheld in full	14(1)(c), 20, 28(1), 30(2)
21	105-109	Individual 11	Withheld in full	14(1)(c), 20, 28(1), 30(2)
22	110	Individual 13	Withheld in full	14(1)(c), 20, 28(1), 30(2)

#	Pages	Description	Severing	Exemptions Applied
Redacted Interview Notes				
23	111-117	Notes of Investigator B of Individual 14	Page 111 – 4 instances Page 113 – 1 instance Page 114 – 4 instances Page 115 – 2 instances Page 116 – 1 instance Page 142 – 1 instance	28(1)
24	118-126	Notes of investigator A of Individual 14	Page 118 – 5 instances Page 121 – 2 instances Page 122 – 3 instances	28(1)
25	127-132	Notes of Investigator A of Individual 15	Page 127 – 3 instances Page 128 – 3 instances Page 129 – 7 instances Page 130 – 1 instance Page 131 – 4 instances Page 132 – 1 instance	28(1)
26	133-136	Notes of Investigator B of Individual 15	Page 133 – 6 instances Page 134 – 1 instance Page 135 – 4 instances Page 136 – 2 instances	28(1)
27	137-140	Notes of Investigator B of Individual 16	Page 137 – 4 instances Page 138 – 4 instances Page 139 – 3 instances Page 140 - 4 instances	28(1)
28	141-144	Notes of Investigator A of Individual 16	Page 141- 7 instances Page 142 – 1 instance Page 143 – 1 instance	28(1)
Written Complaints				
29	145	Individual 4	Withheld in full	14(1)(c), 20, 28(1), 30(2)
30	146-148	Individual 5 (same as pages 26-28)	Withheld in full	14(1)(c), 20, 28(1), 30(2)
31	149-151	Individual 6	Withheld in full	14(1)(c), 20, 28(1), 30(2)
32	152	Individual 9	Withheld in full	14(1)(c), 20, 28(1), 30(2)
33	153-154	Individual 10	Withheld in full	14(1)(c), 20, 28(1), 30(2)
34	155	Individual 14	Withheld in full	14(1)(c), 20, 28(1), 30(2)
35	156	Individual 15	Withheld in full	14(1)(c), 20, 28(1), 30(2)
36	157-158	Individual 16	Withheld in full	14(1)(c), 20, 28(1), 30(2)
37	159-153	Individual 17	Withheld in full	14(1)(c), 20, 28(1), 30(2)

III DISCUSSION OF THE ISSUES

1. Does my office have jurisdiction in this matter?

[5] Cornerstone qualifies as a local authority pursuant to subsection 2(f)(viii) of LA FOIP. Therefore I have the authority to proceed with this review.

2. Does subsection 14(1)(c) of LA FOIP apply to the record?

[6] Subsection 14(1)(c) of LA FOIP provides:

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

...

(c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

[7] My office has established the following test to determine whether subsection 14(1)(c) of LA FOIP applies to a record:

1. Does the public body's activity qualify as a "lawful investigation"?

2. Does one of the following exist?

a. The release of information would interfere with a lawful investigation, or

b. The release of information would disclose information with respect to a lawful investigation.

[8] Cornerstone applied this exemption to all records it withheld in full.

Does the public body's activity qualify as a "lawful investigation"?

[9] A lawful investigation is an investigation that is authorized or required and permitted by law. The public body should identify the legislation under which the investigation is occurring.

[10] Cornerstone explained that the Applicant, who held an administrative position, was accused of intimidating students, parents and volunteers during a specific event. Once it learned of the accusations, Cornerstone launched an investigation that included interviews of students and others. Two of the superintendents of schools conducted the interviews and prepared a report. As a result, the Applicant's contract was amended and the Applicant no longer performs certain duties.

[11] Cornerstone's submission indicates that the amendment of the Applicant's contract followed the procedure outlined in section 215 of *The Education Act, 1995*. This procedure

also complied with section 210 of *The Education Act*. Cornerstone's submitted these sections allow the board to amend the contract of employment to remove duties and in order to carry out these actions in a legally defensible way the board must follow due process. It also offered that investigation forms part of this due process.

[12] Neither section 210, nor 215 of *The Education Act* specifically references an investigation. Further, it appears that any intent to amend the contract of employment would have had to exist before this section is engaged. Also, there can be circumstances where the decision to amend a contract of employment was not the result of an investigation. I am not persuaded that sections 210 or 215 of *The Education Act* authorizes or requires and permits an investigation. Therefore, the first test is not met.

[13] Subsection 14(1)(c) of LA FOIP does not apply to the record.

3. Did Cornerstone properly apply subsection 28(1) of LA FOIP to the record?

[14] 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.

[15] In order for subsection 28(1) of LA FOIP to apply, the information in the record must first qualify as "personal information" as defined by subsection 23(1) of LA FOIP; however, it is not an exhaustive list. Some relevant provisions include:

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;

...

(f) the personal opinions or views of the individual except where they are about another individual;

(g) correspondence sent to a local authority by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that

would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

(h) the views or opinions of another individual with respect to the individual;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

[16] Cornerstone has indicated that it believes that the interview notes (pages 1-110 of the record) and the written complaints (pages 145-153) qualify as personal information in their entirety. It submitted that the interview notes contain facts about events that are “intertwined” with descriptions about actions and reactions about those involved and opinions about the Applicant and others. It indicated that it would be difficult to sever personal information from both the interview notes and written complaints and would leave nothing but meaningless phrases. Cornerstone also submitted that severing some information would reveal the identity of the interviewees, which is also personal information.

Personal information of individuals other than the Applicant in the fully withheld notes and complaints

[17] The records are interview notes and written complaints that relate to an investigation into the actions of the Applicant, an employee of Cornerstone. Early decisions by Information and Privacy Commissioners have held that information relating to an investigation into, or assessment of, the employment conduct of a public body employee is that employee’s personal information (see British Columbia Office of the Information and Privacy Commissioner Order 01-07 and Ontario Information and Privacy Commissioner Order MO-1285). Nevertheless, personal information of other individuals must be severed from the record.

[18] I will discuss the following sample of the fully withheld interview notes and written complaints:

- pages 1 to 3 - notes of Investigator A's interview of Individual 1;
- pages 90 to 95 - notes of Investigator B's interview of Individual 8;
- pages 149 to 151 - written complaint of individual 6; and
- pages 157-158 - written complaint of individual 16.

[19] The notes and complaints primarily consist of general observations and descriptions of events. Past reports of this office have found that general observations and descriptions of what occurs in the workplace is not considered personal information. Cornerstone indicated that the majority of the witnesses are not employees of the local authority. However, I note again that the records are in the possession and control of Cornerstone because of its investigation of its employee. These types of observations do not qualify as personal information.

[20] However, the record does contain personal information of various individuals. For example, the record indicates what grades some students were in at the time of the incident. This would qualify as the education history of the students and personal information pursuant to subsection 23(1)(b) of LA FOIP. This type of personal information should be severed and withheld.

[21] The record also contains the views and opinions of the individuals' on the situation at hand. This would qualify as personal information if the individual was giving the opinion pursuant to subsection 23(1)(f) of LA FOIP. This type of personal information should also be severed and withheld.

[22] There are also many passages that give the individuals' views and opinions about other individuals. These opinions relate to various people including the Applicant, but also other adults and students involved. Pursuant to subsection 23(1)(b) of LA FOIP, the views and opinions about an individual qualifies as the personal information of the subject individual.

[23] If the view or opinion is about someone other than the Applicant, Cornerstone should sever it from the record and withhold it.

[24] However, the British Columbia Office of the Information and Privacy Commissioner Order F10-10 noted that it is established that opinions and comments about an individual are the personal information of that individual. It also noted that it has been established that the identity of the opinion-giver is also part of the personal information of the individual about whom the opinions are expressed. In other words, the opinions and views about the Applicant and the identity of the opinion-giver, is both the personal information of the Applicant and the opinion-giver.

[25] After reading a draft copy of this report, Cornerstone noted that this order from British Columbia went on to consider whether disclosure of the personal information to the Applicant would be an “unreasonable invasion of privacy”. The order found that it would not be and recommended release. Cornerstone submitted that, in the present case, disclosure would be an unreasonable invasion of privacy. The “unreasonable invasion of privacy” test that is found in British Columbia’s *Freedom of Information and Protection of Privacy Act* and similar legislation in many of the jurisdictions across Canada; however, does not exist in LA FOIP. Therefore, I must find a mechanism in LA FOIP to determine whether the identity of the opinion-givers should be released to the Applicant. As such, I will continue to discuss opinions and views about the Applicant and the identities of the witnesses in the next two issues addressed in this report.

[26] I have provided Cornerstone with a copy of the sample of the record where I have noted what personal information should be severed from the record and withheld. I recommend that Cornerstone release the rest to the Applicant. I recommend that Cornerstone go through the remainder of the notes and written complaints and identify the personal information of the Applicant and others. I recommend that it sever and withhold the personal information of others and release the rest to the Applicant.

Redacted Interview Notes

[27] Cornerstone has gained the consent of several of the interviewees to share notes of their interviews with the Applicant. Cornerstone released their names and the majority of the

notes to the Applicant, but attempted to withhold the personal information of individuals other than the interviewee and the Applicant (pages 111-144 of the record).

[28] With respect to the material redacted from the interview notes released to the Applicant, I am not in agreement that it would all qualify as personal information of individuals other than the Applicant. There are several instances where Cornerstone severed only names out of sentences. Pursuant to subsection 23(1)(k)(i) of LA FOIP, the name of an individual can qualify as personal information if it appears with other personal information that relates to the individual.

[29] In some cases, these sentences represent an opinion of the interviewee about a situation or another individual. As such, the names would be personal information of the interviewee or the subject individual. In some cases, the name is redacted in a sentence that describes an observation about the event. The names would not qualify as personal information in these cases.

[30] My recommendations of what should be released with respect to the redacted interview notes is found in Appendix A of this report.

[31] I also note that one of the interviewees was a close relative of the Applicant. This individual gave consent to Cornerstone to release notes of their interview to the Applicant. Cornerstone withheld this relative's personal information in the notes of all the interviews with other interviewees. I recommend that Cornerstone ask the relative for consent to release all of the relative's personal information to the Applicant.

4. Does subsection 30(2) of LA FOIP apply to the record?

[32] Subsection 30(2) of LA FOIP provides:

30(2) A head may refuse to disclose to an individual personal information that is evaluative or opinion material compiled solely for the purpose of determining the individual's suitability, eligibility or qualifications for employment or for the awarding of contracts and other benefits by the local authority, where the information is provided explicitly or implicitly in confidence.

[33] The provision attempts to address two competing interests: the right of an individual to have access to his or her personal information and the need to protect the flow of frank information to public bodies so that appropriate decisions can be made respecting the awarding of jobs, contracts and other benefits. It enables the head to refuse to disclose to individuals information that is evaluative or opinion material compiled for the purpose of determining suitability, eligibility or qualifications for employment.

[34] In order to be withheld under this subsection, all three parts of the test must be met:

1. Is the information personal information that is evaluative or opinion material?
2. Was the personal information compiled solely for one of the following purposes:
 - i. for determining the individual's suitability, eligibility or qualifications for employment? or
 - ii. for the awarding of contracts with the public body? or
 - iii. for awarding other benefits?
3. Was the personal information provided explicitly or implicitly in confidence?

Is there personal information that is evaluative or opinion material?

[35] Cornerstone applied subsection 30(2) of LA FOIP to the interview notes that were withheld in full and the written complaints. Subsection 30(2) has been applied to these records in their entirety.

[36] In order to be found to be personal information, the information must qualify pursuant to subsection 23(1) of LA FOIP. Subsection 30(2) of LA FOIP also requires that the personal information be evaluative or opinion material. Evaluative means to have assessed, appraised, to have found or to have stated the number of. An opinion is a belief or assessment based on grounds short of proof; a view held as probable; for example, a belief that a person would be a suitable employee, based on that person's employment history. An opinion is subjective in nature, and may or may not be based on facts.

[37] As described above, not all of the information found in the record qualifies as personal information. The application of subsection 30(2) of LA FOIP narrows even further because the personal information must be about the Applicant and it must be evaluative and opinion material. However, there is information that would qualify as evaluative and opinion

material. Examples include where interviewees disagreed with actions or decisions taken by the Applicant and opinions about the Applicant's demeanor.

Was the personal information compiled solely for determining the individual's suitability, eligibility or qualifications for employment?

[38] The Applicant was accused of misconduct after a specific event. Some of these accusations are found in the written complaints. Cornerstone undertook an investigation into these allegations. The interviews were performed over the course of several days and specifically done for the purpose of investigating these allegations.

[39] In *Fogal v. Regina School Division No. 4* (2002), a teacher was placed on an extensive performance evaluation process as a result of parental concerns brought forward to a school division. The teacher later requested access under LA FOIP to the views or opinions made about her. The school division withheld the information pursuant to subsection 30(2) of LA FOIP. Justice Hrabinsky determined that the provision was appropriately applied and that evaluating suitability for employment can take place not only during the hiring process but also during an employee's tenure. Further, the provision can include unsolicited records such as letters of concern or a complaint from parents.

[40] I am persuaded that the information was compiled solely for determining the Applicant's suitability for employment. The second test is met.

Was the personal information provided explicitly or implicitly in confidence?

[41] Finally, Cornerstone must demonstrate that the personal information was provided explicitly or implicitly in confidence.

[42] With respect to the interview notes, Cornerstone indicated in its submission that the interviewees were informed before each interview began that the interviewers would keep the information confidential unless it was required to disclose the information by law. Because of this, Cornerstone submitted that there was an understanding at the time the information was supplied about how the information would be used. I am satisfied that the information was provided explicitly in confidence.

[43] With respect to the written complaints, Cornerstone indicated that the personal information was implicitly provided in confidence.

[44] Implicitly provided in confidence means that the confidentiality is understood even though there is no actual statement of confidentiality, agreement, or other physical evidence of the understanding that the information will be kept confidential. Factors considered when determining whether a document was supplied in confidence implicitly include (not exhaustive):

- What is the nature of the information? Would a reasonable person regard it as confidential? Would it ordinarily be kept confidential by the third party or public body?
- Was the information treated consistently in a manner that indicated a concern for its protection by the third party and the public body from the point at which it was supplied until the present time?
- Is the information available from sources to which the public has access?
- Does the public body have any internal policies or procedures that speak to how records such as the one in question are to be handled confidentially?
- Was there a mutual understanding that the information would be held in confidence? Mutual understanding means that the public body and the third party both had the same understanding regarding the confidentiality of the information at the time it was supplied. If one party intends the information to be kept confidential but the other does not, the information is not considered to have been supplied in confidence. However, mutual understanding alone is not sufficient.

[45] Cornerstone submitted that, given the nature of the allegations and the reasonable fear individuals might have that there might be intimidation directed against them, or against students, supports the idea that an expectation of confidentiality was reasonable in this situation.

[46] I refer to a decision by the Information and Privacy Commissioner of Ontario (Privacy Complaint No. PC-050014-1) regarding a privacy complaint. It involved a complaint written to the Minister of Children and Youth Services, about the conduct of

staff at a Children's Aid Society (CAS). The letter was forwarded to the CAS, and the complainant viewed this as improper disclosure. The investigator stated, in his report, that:

...in my view, an individual writing a letter to a Minister for a government should possess an implicit understanding, at the time the letter is sent, that the Minister may contact other parties in order to provide a response. More importantly, where a letter contains allegations of impropriety, and requests that the Minister investigate, there should be an implicit understanding by the individual that the contents of the complaint (i.e. the letter in this instance) may be disclosed to the party that is the subject of the complaint. Without having been provided with the letter, the subject of the complaint would not have the opportunity to respond to the allegations that may have been raised.

In my view, to arrive at any alternate conclusion would unreasonably limit the ability of government institutions to respond to letters of complaint received from members of the public.

[47] The same principles can be applied in this review. One would expect that Cornerstone would need to share the allegations in the complaint letters with the Applicant to ensure fairness in its process.

[48] Cornerstone indicated that employers are only required to give an employee sufficient details of the complaint so that the employee is able to fully answer the complaint; therefore it demonstrates that the written complaints were provided implicitly in confidence. I note that subsection 30(2) of LA FOIP is discretionary, as would be an employer's decision of what details to provide to the employee. An employer could provide all of the details if it wished. As such, I am not persuaded that the letters of complaint were provided implicitly in confidence.

[49] Subsection 30(2) applies to personal information of evaluative or opinion material of the Applicant found in the interview notes only. This does not apply where the interviewee has consented to release of the record.

[50] Further, the identities of the interviewees may also be released because opinions and views about the Applicant will be withheld, as will the personal information that is not of the Applicant. Release of the identities of the interviewees would only reveal observations.

[51] After receiving a copy of the draft report, Cornerstone indicated that that it would be difficult to separate opinions and personal information that should be withheld from the general observations and other information that should be released to the Applicant. As noted above, my office has gone through the exercise of severing the appropriate material from the sample portions of the record. It does require time and thoughtfulness to complete this task, but from the sample, the opinions and personal information are not so interwoven with the rest of the information that it makes the task impossible. This is what is required by section 8 of LA FOIP.

5. Does Cornerstone have authority to release the views and opinions of the Applicant, and identities of the interviewees, to the Applicant pursuant to subsections 28(2)(a) or (n)(ii) of LA FOIP?

[52] As noted earlier, the opinions and views about the Applicant, including the identity of the opinion-giver, is the personal information of both the Applicant and the opinion-giver. A legislative conflict arises between the right to access one's own personal information and the other individual's right of privacy. In other jurisdictions, this question is handled by a kind of balancing test as to whether any given disclosure of personal information would constitute "an unreasonable invasion of privacy. LA FOIP does not have exactly the same type of provision. This is discussed in my office's Review Report LA-2013-001.

[53] Also a factor in whether this type of information should be disclosed to the Applicant is whether subsection 30(2) of LA FOIP applies to views and opinions about the Applicant. As discussed above, I have found that subsection 30(2) of LA FOIP applies to the views and opinions found in the fully withheld interview notes so they may be withheld. There was no need to consider whether it applied to the partially redacted interview notes, as the opinion-givers consented to disclosure. However, I still must consider the views and opinions about the Applicant in the written complaints.

[54] To answer the question I turn to the decision of *Liick v. Saskatchewan (Minister of Health)* [1994] which also dealt with witness statements. Justice Hrabinski indicated that a

“decision by a head to withhold personal information of the appellant on the ground that it is also personal information of another individual is untenable in this instance.” He recommended disclosure because it “would clearly benefit the appellant in his grievances against his employer.” The decision references subsection 29(2)(o)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP) which is the equivalent subsection 28(2)(n)(ii) of LA FOIP. It provides:

28(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

...

(n) for any purpose where, in the opinion of the head:

...

(ii) disclosure would clearly benefit the individual to whom the information relates;

[55] The Applicant indicated that action has been taken by Cornerstone as a result of these complaints and interviews and the Applicant does not know what the allegations were and was unable to respond to the allegations appropriately. In keeping with Justice Hrabinski’s decision, disclosure of the opinions and views about the Applicant would clearly benefit the Applicant as future options are considered.

[56] Further, subsection 28(2)(a) of LA FOIP provides:

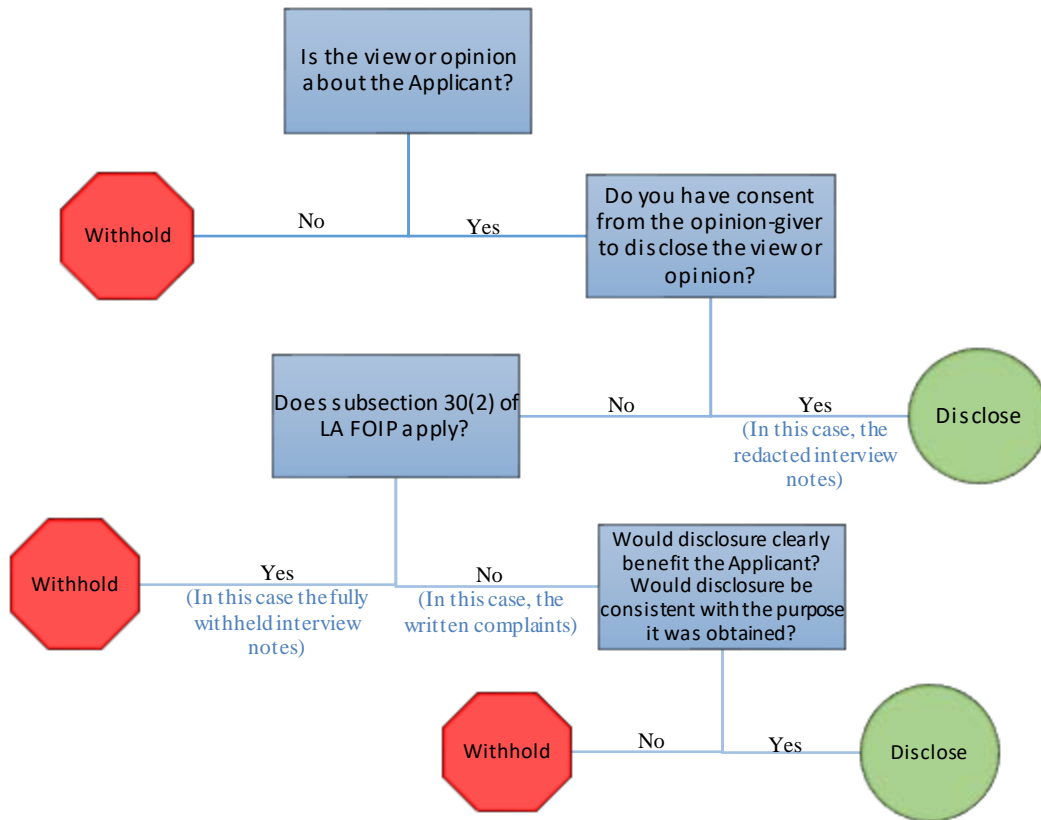
28(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

(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;

[57] I noted a decision by the Information and Privacy Commissioner of Ontario (Privacy Complaint No. PC-050014-1) at paragraph [45]. It indicated that an individual who makes a complaint about another person should expect that the complaint would be shared with the subject individual. As such, the disclosure of the views and opinions about the Applicant could be consistent with the purpose it was obtained or compiled.

[58] I recommend that Cornerstone consider using its discretion to disclose these views and opinions, and the identities of the opinion-givers, to the Applicant.

[59] Given the complexity of this subject matter, I have created the following decision tree chart to assist Cornerstone in its decision making process.



6. Does section 20 of LA FOIP apply to the record?

[60] Section 20 of LA FOIP provides:

20 A head may refuse to give access to a record if the disclosure could threaten the safety or the physical or mental health of an individual.

[61] This provision is meant to provide the ability to refuse access to information if its disclosure could threaten the safety, physical or mental health of an individual. In order to determine whether a threat to the safety, physical or mental health of any person exists, all three parts of the following test must be met:

1. Is there a reasonable expectation of probable harm?

2. Does the harm constitute damage or detriment and not mere inconvenience?
3. Is there a causal connection between disclosure and the anticipated harm?

[62] In its submission, Cornerstone noted that there had been local publicity about the events in question. Specifically, a local newspaper has been publishing letters to the editor in support of the Applicant. The letters question the decisions of the administration of Cornerstone with respect to the Applicant and indicate that the authors will look for ways to ensure decision makers will be held accountable for those decisions. Cornerstone is concerned that, if the identities of the interviewees are released to the Applicant they might also result in similar letters being published about the interviewees.

[63] I am not satisfied that there is a causal connection between the release of the record and the harm alleged by Cornerstone. In a democracy, it is a common occurrence for individuals to voice concerns about decisions made by administrators of public bodies in this manner. I do not see a connection between release of the names of the interviewees to the Applicant and opinion pieces about their decision making published in the local newspaper. Further, Cornerstone indicated that section 20 “may or may not be sufficient in itself to sustain a refusal to disclose”. I am not persuaded that there is a reasonable expectation of harm. Section 20 does not apply to the records.

IV FINDINGS

[64] I find subsection 14(1)(c) and section 20 of LA FOIP do not apply to the record.

[65] I find that subsection 28(1) of LAFOIP applies to personal information of individuals other than the Applicant, as described in this report.

[66] I find that subsection 30(2) of LA FOIP applies to evaluative or opinion material about the Applicant found in the interview notes of the interviewees who did not provide consent for disclosure.

[67] I find that, pursuant to subsections 28(2)(a) and (n)(ii) of LA FOIP, Cornerstone has authority to disclose the views and opinions about the Applicant and the identity of the opinion-giver to the Applicant.

V RECOMMENDATIONS

[68] I recommend that Cornerstone release information to the Applicant as identified in the sample of the interview notes and written complaints which I have provided to Cornerstone.

[69] I recommend that, in the remainder of the interview notes and written complaints, Cornerstone identify and withhold the personal information of individuals other than the Applicant as described in this report. I recommend it release the rest of the record to the Applicant.

[70] I recommend that Cornerstone withhold any evaluative or opinion material about the Applicant found in the interview notes of the interviewees who did not provide consent for release.

[71] I recommend that Cornerstone ask the relative of the Applicant for consent to release all of the relative's personal information to the Applicant.

[72] With respect to the redactions in the interview notes of the interviewees who consented to release, I recommend release of information to the Applicant as described in Appendix A of this report.

Dated at Regina, in the Province of Saskatchewan, this 6th day of July, 2018.

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

Appendix A

#	Pages	Description	Severing	Withhold or Release
Interview notes partially released				
23	111-117	Notes of Investigator B of Individual 14	Page 111 – Instance 1	Release
			Page 111 – Instance 2	Release
			Page 111 – Instance 3	Withhold
			Page 111 – Instance 4	Release
			Page 113 – Instance 1	Release
			Page 114 – Instance 1	Release
			Page 114 – Instance 2	Release
			Page 114 – Instance 3	Release
			Page 114 – Instance 4	Release
			Page 115 – Instance 1	Withhold
			Page 115 – Instance 2	Withhold
24	118-126	Notes of investigator A of Individual 14	Page 118 – Instance 1	Release (withhold grade only)
			Page 118 – Instance 2	Withhold
			Page 118 – Instance 3	Release
			Page 118 – Instance 4	Withhold
			Page 118 – Instance 5	Withhold
			Page 121 – Instance 1	Release
			Page 121 – Instance 2	Release
			Page 122 – Instance 1	Release
25	127-132	Notes of Investigator A of Individual 15	Page 122 – Instance 2	Withhold
			Page 122 – Instance 3	Release
			Page 127 – Instance 1	Withhold
			Page 127 – Instance 2	Withhold
			Page 127 – Instance 3	Withhold
			Page 128 – Instance 1	Withhold
			Page 128 – Instance 2	Release
			Page 128 – Instance 3	Release
			Page 129 – Instance 1	Release
			Page 129 – Instance 2	Release
			Page 129 – Instance 3	Release
			Page 129 – Instance 4	Release
			Page 129 – Instance 5	Release
			Page 129 – Instance 6	Release
			Page 129 – Instance 7	Release
			Page 130 – Instance 1	Withhold first line only
Page 131 – Instance 1	Release			
Page 131 – Instance 2	Withhold last sentence only			
Page 131 – Instance 3	Release			
Page 131 – Instance 4	Withhold last 3 lines only			
Page 132 – Instance 1	Withhold			
26	133-136	Notes of Investigator B of Individual 15	Page 127 – Instance 1	Withhold
			Page 133 – Instance 2	Release
			Page 133 – Instance 3	Release
			Page 133 – Instance 4	Withhold
			Page 133 – Instance 5	Withhold
			Page 133 – Instance 6	Withhold

#	Pages	Description	Severing	Withhold or Release
			Page 134 – Instance 1	Release
			Page 135 – Instance 1	Release
			Page 135 – Instance 2	Withhold
			Page 135– Instance 3	Release
			Page 135 – Instance 4	Withhold
			Page 136 – Instance 1	Release
			Page 136 – Instance 2	Withhold lines 1, 2, 3, 4, 6, 7, 8, 14, 15 and 16 only
27	137-140	Notes of Investigator B of Individual 16	Page 137 – Instance 1	Release last sentence only
			Page 137 – Instance 2	Withhold first sentence only
			Page 137 – Instance 3	Withhold
			Page 137 – Instance 4	Release
			Page 138 – Instance 1	Release
			Page 138 – Instance 2	Release
			Page 138 – Instance 3	Release
			Page 138 – Instance 4	Release
			Page 139 – Instance 1	Release
			Page 139 – Instance 2	Release
			Page 139 – Instance 3	Release
			Page 140 – Instance 1	Release
			Page 140 – Instance 2	Release
			Page 140 – Instance 3	Release
28	141-144	Notes of Investigator A of Individual 16	Page 141 – Instance 1	Release
			Page 141 – Instance 2	Withhold
			Page 141 – Instance 3	Release
			Page 141 – Instance 4	Withhold
			Page 141 – Instance 5	Release
			Page 141 – Instance 6	Release
			Page 141 – Instance 7	Release
			Page 142 – Instance 1	Release
			Page 143 – Instance 1	Withhold