



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 012-2018

City of Regina

January 31, 2018

Summary:

The City of Regina (City) received an access to information request. It notified a third party of the request pursuant to section 33 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The third party objected to the release of the redacted record to the Applicant. However, the City made a decision to still provide the Applicant access to the record. The City notified the third party of its decision pursuant to section 36 of LA FOIP. The third party requested a review by the Information and Privacy Commissioner (IPC). The IPC undertook a review and determined that the third party did not meet the legislated timeline of 20 days to request a review. Therefore, the IPC recommended that the City release the redacted record since subsection 36(3) of LA FOIP provides that the head “shall” give the applicant access to the record (or the specified part of it) unless the third party requests a review within 20 days after a notice pursuant to section 36 of LA FOIP is given.

I BACKGROUND

[1] Pursuant to section 33 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), the City of Regina (City) sent a letter dated November 30, 2017 to a third party to notify that it had received an access to information request. The City indicated that it believed the records responsive to the Applicant’s request contains information described in subsection 18(1) of LA FOIP. Therefore, the letter was to provide the third party with the opportunity to make representations to the head of the City as to why access to the record or part of the record should not be given. The City’s letter indicated that the third party must provide representations within 20 days after the notice is given. Attached to the City’s letter was two copies of the record at issue – one copy was

unredacted while the other was redacted. The redacted copy was sent so that the third party could see precisely what information the City intended to provide to the Applicant.

[2] The third party responded to the City in a letter dated December 19, 2017. It objected to the release of the entire record.

[3] Pursuant to section 36 of LA FOIP, the City sent a letter dated December 21, 2017 to the third party indicating it had considered representations but it has decided to still provide the Applicant access to the redacted record. The letter indicated that the third party had until January 8, 2018 to request a review by my office. Otherwise, it would release the record to the Applicant.

[4] On January 8, 2018, the City received correspondence from the third party indicating that it intended to request a review by my office.

[5] On January 16, 2018, the City contacted my office to determine if the third party had indeed requested a review by my office. On the same day, my office contacted the third party to determine if it had requested a review by my office but my office had not received the request.

[6] On January 17, 2018, my office received, the third party's request for review.

II RECORDS AT ISSUE

[7] At issue is whether or not the third party met its legislated timeline to request a review by my office.

III DISCUSSION OF THE ISSUES

[8] The City is a local authority pursuant to subsection 2(f)(i) of LA FOIP.

1. Did the third party meet its legislated timeline to request a review by my office?

[9] Subsections 36(1) and 36(2) of LA FOIP requires a local authority to give written notice to a third party of its decision of whether or not to give access to the record or part of the record. Subsections 36(1) and 36(2) of LA FOIP provides as follows:

36(1) After a third party has been given an opportunity to make representations pursuant to clause 35(1)(b), the head shall, within 30 days after the notice is given:

- (a) decide whether or not to give access to the record or part of the record; and
- (b) give written notice of the decision to the third party and the applicant.

(2) A notice given pursuant to clause (1)(b) is to include:

- (a) a statement that the third party and applicant are entitled to request a review pursuant to section 38 within 20 days after the notice is given; and
- (b) in the case of a decision to give access, a statement that the applicant will be given access to the record or to the part of it specified unless, within 20 days after the notice is given, the third party requests a review pursuant to section 38.

[10] Subsection 36(3) of LA FOIP provides that if the head has decided to give access to the record or a specified part of it pursuant to subsection 36(1)(a) of LA FOIP, it must do so within 20 days after notice is given unless the third party requests a review pursuant to section 38 of LA FOIP. Subsection 36(3) of LA FOIP provides:

36(3) Where, pursuant to clause (1)(a), the head decides to give access to the record or a specified part of it, the head shall give the applicant access to the record or the specified part unless, within 20 days after a notice is given pursuant to clause (1)(b), a third party requests a review pursuant to section 38.

[11] In this case, the City provided a notice pursuant to subsection 36(1)(a) of LA FOIP by way of a letter dated December 21, 2017. I note that the City emailed the letter to the third party that same day. To determine when the third party had to request a review by, I must consider subsection 24(7) of *The Interpretation Act, 1995*, which provides the following:

24(7) A period of time expressed to be after, from or before a specified day does not include that day.

[12] Since subsection 36(3) of LA FOIP states that the head shall give the applicant access to the record or the specified part unless, within 20 days **after** a notice is given pursuant to subsection 36(1)(b) of LA FOIP, the third party had until January 10, 2018 to request a review pursuant to section 38 of LA FOIP. Subsections 38(3) and 38(4) of LA FOIP provides as follows:

38(3) A third party may apply in the prescribed form and manner to the commissioner for a review of a decision pursuant to section 36 to give access to a record that affects the interest of the third party.

38(4) A third party may make an application pursuant to subsection (3) within 20 days after being given notice of the decision.

[13] The third party submitted a request for review to my office on January 17, 2018. In its submission to my office, the third party explained that there was confusion about how to initiate a review by my office. It said its understanding was it had to send notice to the City, not to my office, by January 10, 2017 to initiate the review process.

[14] As a part of the duty to assist pursuant to subsection 5.1(1) of LA FOIP, the City should be informing the third party of its right to request a review by my office and how it can request a review. Based on a review of the City's letter dated December 21, 2017, the City instructed the third party on how to request a review. Its letter stated:

If you would like to exercise your right to request a review, you may do so by completing the "Request for Review" form located at <http://www.gp.gov.sk.ca/documents/Forms/L27-1R1-B.pdf> and forwarding it to Saskatchewan Information and Privacy Commissioner #503-1801 Hamilton Street, Regina, Saskatchewan, S4P 4B4 or you may contact the Saskatchewan Information and Privacy Commissioner at 306-787-8350.

[15] Based on the above, I find that the City met its duty to assist. In other words, its instructions to the third party was clear – the third party was to request a review by submitting the form to my office (and not to the City).

[16] Therefore, I find that the third party did not request a review by my office within the legislated timeline of 20 days after receiving the City's notice pursuant to section 36 of LA FOIP. Since subsection 36(3) of LA FOIP provides that the head of the City "shall" provide access to a record (or the specified part of it), I recommend the City provide the Applicant access to the redacted record.

[17] I thank the City for its patience as my office reviewed this matter to determine if the third party had met its legislated timeline.

IV FINDINGS

[18] I find that the City met its duty to assist.

[19] I find that the third party did not request a review by my office within the legislated timeline of 20 days after receiving the City's notice pursuant to section 36 of LA FOIP.

V RECOMMENDATION

[20] I recommend the City provide the Applicant access to the redacted record.

Dated at Regina, in the Province of Saskatchewan, this 31st day of January, 2018.

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