



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 020-2016

City of Lloydminster

April 6, 2016

Summary: The Applicant made an access to information request to the City of Lloydminster for a proposal submitted to the City by a Third Party. The Commissioner found that subsection 18(1)(b) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) applies to the majority of the record. He did not find that subsections 18(1)(a), (c) and (d) applied to the remainder and recommended release of those portions.

I BACKGROUND

[1] On August 18, 2015, the City of Lloydminster received an access to information request for a proposal from a Third Party regarding waste disposal services. On September 30, 2015, the City provided the Applicant with a response indicating that the record was being withheld in its entirety pursuant to subsections 18(1)(a), (b), (c) and (d) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[2] On February 22, 2016, the Applicant requested a review by my office. On the same day, my office notified the Applicant, the City and the Third Party of our intention to undertake a review.

II RECORDS AT ISSUE

- [3] The record is a 35 page proposal from the Third Party to the City. The City has applied subsections 18(1)(a), (b), (c) and (d) of LA FOIP to the record.

III DISCUSSION OF THE ISSUES

1. Does subsection 18(1)(b) of LA FOIP apply to the record?

- [4] Subsection 18(1)(b) of LA FOIP states:

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

...

(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to the local authority by a third party;

- [5] The three part test that must be met is as follows:

1. Is the information financial, commercial, scientific, technical or labour relations information?
2. Was the information supplied by the third party to a public body?
3. Was the information supplied in confidence implicitly or explicitly?

- [6] All three parts for the test must be met in order for subsection 18(1)(b) of LA FOIP to apply.

- [7] Upon review of the record, the majority of the information contained in the proposal would qualify as commercial information. My office defines commercial information as information relating to the buying, selling or exchange of merchandise or services. Types of information included in the definition of commercial information:

- offers of products and services a third-party business proposes to supply or perform;
- a third-party business' experiences in commercial activities where this information has commercial value;
- terms and conditions for providing services and products by a third party;

- lists of customers, suppliers or sub-contractors compiled by a third-party business for its use in its commercial activities or enterprises - such lists may take time and effort to compile, if not skill;
- methods a third-party business proposes to use to supply goods and services; and
- number of hours a third-party business proposes to take to complete contracted work or tasks.

[8] With this definition in mind, the majority of the document qualifies as commercial information of the Third Party, with the exception of pages 1-4, bullets 3 and 4 on page 6 and the last two pages of the report.

[9] The last two pages of the report are a proposed fee schedule with details about the Third Party's pricing structure. My office has defined financial information as relating to money and its use or distribution and must contain or refer to specific data. Examples of financial information include cost accounting method, pricing practices, profit and loss data, overhead and operating costs. The last two pages qualify as financial information. The remainder of the document does not qualify as financial, commercial, scientific, technical or labour relations information.

[10] The Third Party made this proposal to the City. Therefore, the Third Party supplied it to the City and the second part of the test is met.

[11] In the Third Party's submission, it noted that it put an explicit notice on the front cover of the proposal which states: "This proposal is to be treated as confidential and is intended for the Office and Council of the City of Lloydminster only." As such, it submitted that the information was supplied explicitly in confidence. I agree that the third part of the test is met.

[12] Subsection 18(1)(b) of LA FOIP applies to the entire record with the exception of pages 1-4, bullets 3 and 4 on page 6.

2. Does subsection 18(1)(a) of LA FOIP apply to the record?

[13] Subsection 18(1)(a) of LA FOIP states:

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

(a) trade secrets of a third party;

[14] As I have found that subsection 18(1)(b) of LA FOIP applies to the majority of the record, I will only consider the remaining portions.

[15] My office has defined trade secrets as information, including a formula, pattern, compilation, program, device, product, method, technique or process:

- i. that is used, or may be used, in business or for any commercial purpose;
- ii. that derives independent economic value, actual or potential, from not being generally known to anyone who can obtain economic value from its disclosure or use;
- iii. that is the subject of reasonable efforts to prevent it from becoming generally known; and
- iv. the disclosure of which would result in significant harm or undue financial loss or gain.

[16] The information must meet all of the above criteria to be considered a trade secret. Further, the third party must also be able to prove ownership or a proprietary interest in the trade secret or prove a claim of legal right to the information.

[17] In its submission, the Third Party explained what would qualify as a trade secret within the record. However, upon review, the remaining information would not qualify as a trade secret as it is general information about the Third Party and the subject matter of the proposal.

[18] Therefore, subsection 18(1)(a) of LA FOIP does not apply to the remainder of the record.

3. Does subsection 18(1)(c) of LA FOIP apply to the record?

[19] Subsection 18(1)(c) of LA FOIP states:

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

...

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

(i) result in financial loss or gain to;

(ii) prejudice the competitive position of; or

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

a third party;

[20] The parties do not have to prove that a harm is probable, but needs to show that there is a “reasonable expectation of harm” if any of the information were to be released.

[21] In the submission that the Third Party made to my office, it noted that the release of the proposal would result in financial loss to the Third Party and effect its competitive position. Many of its processes and methods are outlined in the proposal for the City. The Third Party asserts that by releasing the proposal, competitors would be able to tailor their proposals and negotiate and secure contracts for which the Third Party would also be competing.

[22] When considering the rest of the record, I am not persuaded that the general type of information that remains qualifies as information that could reasonably be expected to result in the harm described by the Third Party.

4. Does subsection 18(1)(d) of LA FOIP apply to the record?

[23] Subsection 18(1)(d) of LA FOIP states:

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

...

(d) a statement of a financial account relating to a third party with respect to the provision of routine services from a local authority.

[24] My office has not had the opportunity to consider this exemption in depth in the past. We have not formally defined a “statement of financial account”. However, the remaining portions of the record are simply background information about the Third Party. It does not relate to a specific financial account. Further, it does not appear to be a type of “statement”. Therefore, I find that subsection 18(1)(d) of LA FOIP does not apply.

IV FINDINGS

[25] I find that subsection 18(1)(b) of LA FOIP applies to the entire record with the exception of pages 1 to 4 and bullets 3 and 4 on page 6.

[26] I find that subsections 18(1)(a), (c) and (d) of LA FOIP do not apply to the remainder of the record.

V RECOMMENDATION

[27] I recommend that the City release pages 1 to 4 and bullets 3 and 4 on page 6 of the record to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 6th day of April, 2016.

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