



REVIEW REPORT 036-2017

City of Saskatoon

April 18, 2017

Summary:

The Applicant submitted an access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the City of Saskatoon (the City). The City responded by indicating it did not have possession or control over the records. The Information and Privacy Commissioner (IPC) found that the City has control over at least some of the records. In the course of the review, the City agreed it would request the information from Remail Modern Art Gallery (Art Gallery). The IPC recommended that it release such information to the Applicant.

I BACKGROUND

[1] On January 24, 2017, the City of Saskatoon (the City) received the following access to information request:

Travel Expenses of Remail Modern Art Gallery Director Gregory Burke from 2013 – Present including transportation, hotel rooms and meal invoices.

[2] In a letter dated February 8, 2017, the City provided the Applicant with a public report that was submitted to City council on March 21, 2016 that was in response to a Councillor's inquiry relating to out-of-province travel expenses for controlled corporations for 2015 and budgeted for 2016. Included in the public report was a summary of the Remail Modern Art Gallery (Art Gallery) Director's expenses. However, the City said that it does not have travel expenses to the detail that the Applicant

requested. Specifically, the City said it does not have “custody or control over these records”.

[3] On February 28, 2017, the Applicant requested a review by my office.

[4] On March 6, 2017, my office notified both the Applicant and the City that it would be undertaking a review.

II RECORDS AT ISSUE

[5] At issue is whether the City has possession or control over records that detail the travel expenses of the Executive Director and CEO of the Art Gallery from 2013 to present.

III DISCUSSION OF THE ISSUES

[6] The City is a “local authority” as defined by subsection 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

1. Are the responsive records within the possession and/or control of the City pursuant to section 5 of FOIP?

[7] The City’s position is that it does not have possession or control over the requested records. It asserts that it is the Art Gallery’s board, and not the City, that is responsible for approving budget, processing payments, and maintaining accounts payable invoices and records for the Art Gallery.

[8] Section 5 of LA FOIP provides the right of access as follows:

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.

[9] LA FOIP only applies to those records under the possession or under the control of a local authority. I will need to determine if the records in question are under the possession or control of the City.

i. Does the City have control of the records?

[10] Subsection 2(1)(h)(ii) of *The Cities Act* defines “controlled corporation” as follows:

2(1) In this Act:

...
(h) “controlled corporation” means a corporation:

...
(ii) of which all or a majority of its members or directors are appointed by a city or group of cities and other municipalities;

[11] Twelve of the fourteen directors of the board of the Art Gallery are appointed by the City. The Art Gallery is a controlled corporation of the City. Section 156 of *The Cities Act* provides:

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:

...
(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);
...

(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.

...

[12] Based on subsections 156(2)(b)(iv) and(v) of *The Cities Act*, the City’s public accounts should include the expenditures for travel and other expenses incurred by each employee

of a controlled corporation. Further, based on subsection 156(3) of *The Cities Act*, the Applicant is entitled to inspect the public accounts.

[13] Since the City must include the expenditures for travel and other expenses incurred by the Art Gallery employees in its public accounts, I find that the City has control over at least some records that contains information about the expenditures for travel and other expenses incurred by the Art Gallery's Executive Director and CEO. This would include the total dollar amount for expenditures for travel and other expenses incurred.

[14] I note that subsection 4(a) of LA FOIP provides that LA FOIP complements and does not replace existing procedures for access to information or records in the possession or under the control of a local authority. The Applicant should have been able to gain access to information about the expenditures for travel and other expenses incurred by the Art Gallery's Executive Director and CEO pursuant to subsection 156(3) of *The Cities Act*. My office reviewed the City's "Public Accounts 2015: Supplementary Statement and Schedules", which is available on the City's website. The total dollar amount of travel and other expenses of each City Council member are published but expenditures for travel and other expenses incurred by the Art Gallery's employees do not appear to be published. Similar to the City Council members, I recommend that the City make at least the total dollar amount for expenditures for travel and other expenses incurred by Art Gallery employees, including the Executive Director and CEO, available in its public accounts, pursuant to subsections 156(2) and 156(3) of *The Cities Act*.

[15] In its letter dated April 13, 2017, the City agreed to requesting the totals that ought to have been included in the public accounts, including the total travel and other expenses for 2013, 2014, and 2015, from the Art Gallery. It noted that the public accounts for 2016 have not been published.

ii. Does the City have possession of the records?

[16] Possession is the physical possession of the records plus a measure of control of the records. The City asserts it does not have physical possession of the records.

[17] In terms of the search of electronic records, the City used the search terms “Gregory Burke”, “Remai”, and “travel” to search its Electronic Records Management System. It was able to locate a public report that was located within the City Clerk’s office. The City provided that public report to the Applicant, as described earlier in the background.

[18] In terms of the search of paper records, the City searched the City Clerk’s office where all Council and Committee records are located. It also searched the Finance Department where the Director of Finance confirmed that it did not have any records pertaining to the Art Gallery.

[19] The City asserts that the records of the Art Gallery are not integrated with the City’s Electronic Records Management System or its paper records. For the public report (described in paragraphs [2] and [17]), it asserts that public report was voluntarily provided by the Art Gallery in response to an inquiry of a former City Councillor, which was subsequently reported to City Council or a Committee of Council.

[20] I find that the City does not have possession of the records.

IV FINDINGS

[21] I find that the City has control over at least some of the records that has information about the expenditures for travel and other expenses incurred by the Art Gallery’s Executive Director and CEO, including the total dollar amount.

[22] I find that the City does not have possession of the records.

V RECOMMENDATIONS

[23] I recommend that the City follow through with requesting the totals that ought to be in its public accounts from the Art Gallery as described in paragraph [15] and releasing such information to the Applicant.

[24] I recommend that the City make at least the total dollar amount for expenditures for travel and other expenses incurred by Art Gallery employees, including the Executive Director and CEO, available in its public accounts, pursuant to subsections 156(2) and 156(3) of *The Cities Act*.

Dated at Regina, in the Province of Saskatchewan, this 18th day of April, 2017.

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