

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 087/2013

City of Regina

Summary: The Applicant requested records from the City of Regina. The City responded to the Applicant providing redacted versions of the records citing subsections 16(1)(a), (c), (d), (e), 17(1)(d), (e), (f), (g), 18(1)(b) and (c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found that the City appropriately applied subsections 17(1)(d), 16(1)(a) and 28(1) to the records and recommended they continue to be withheld.

I BACKGROUND

[1] On April 9, 2013, the City of Regina (City) received an access to information request from the Applicant for the following information:

- 1) The business case as prepared by [the third party]
- 2) The business case as submitted to PPP Canada
- 3) The full version of the Delivery Model Assessment

[2] The City responded to the Applicant by a letter dated May 2, 2013. The City provided a redacted version of the record to the Applicant and cited subsections 16(1)(a)(c)(d)(e); 17(1)(d)(e)(f)(g) and 18(1)(b)(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) as authority to withhold the remainder.

[3] On September 12, 2013, my office received a Request for Review from the Applicant.

[4] My office notified the City and Applicant of its intention to undertake a review via letter dated September 27, 2013. My office received a submission from the third party on December 13, 2013. A submission was received from the City on January 24, 2014 and one from the Applicant on March 28, 2014.

[5] My office completed its preliminary analysis and shared its findings and recommendations with the City in a letter dated July 15, 2014. The City responded to my office on September 5, 2014 indicating that it would be releasing additional information to the Applicant as recommended by my office. On September 26, 2014, the City posted severed versions of the responsive record on its Open Information website making it available to the public. This Review Report will address only the remaining information that has been withheld.

II RECORDS AT ISSUE

[6] The record consists of the following two documents:

- 1) The Delivery Model Assessment prepared by the third party (70 pages); and
- 2) The business case submitted to PPP Canada (approx. 420 pages)

III DISCUSSION OF THE ISSUES

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

1. Does subsection 16(1)(a) of LA FOIP apply?

[8] Subsection 16(1)(a) of LA FOIP is a discretionary exemption and provides:

16(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

- (a) advice, proposals, recommendations, analyses or policy options developed by or for the local authority;

[9] The City applied subsection 16(1)(a) of LA FOIP to some of the information in document #2. Specifically, the City withheld the following information pursuant to this subsection:

- Page 41 and 42 – Charts;
- Appendix D pages 9 to 16;
- Appendix D: appendix B pages 1 to 4 charts; and
- Appendix G- all charts.

[10] The following two criterion must be met in order for subsection 16(1)(a) of LA FOIP to be found to apply:

- i. The information in the record must constitute “advice”, “proposals” “recommendations”, “analyses” and/or “policy options”; and
- ii. It is offered or developed “by or for the local authority”.

i. Does the information in the record constitute “advice”, “proposals” “recommendations”, “analyses” and/or “policy options”?

[11] The City asserted in its submission that the information in the document constituted “advice”, “recommendations”, “analyses” and “policy options”.

[12] *Advice* includes the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts.

[13] *Recommendations* include suggestions for a course of action as well as the rationale for a suggested course of action.

[14] *Proposals, analyses or policy options* are closely related to advice and recommendations and refer to the concise setting out of the advantages and disadvantages of particular courses of action.

[15] Further, proposals, recommendations, analyses and/or policy options must be:

- sought or expected, or be part of the responsibility of a person by virtue of that person’s position;

- directed towards taking an action, including making a decision; and
- made to someone who can take or implement the action.

[16] From a review of document #2, the information severed appears to qualify as analyses, advice and recommendations. For example, the information severed refers to costs and risks for different models. This information is meant to assist the City in decision-making. Therefore, I find that the information severed by the City in document #2 qualifies for the first part of the test.

ii. Was it offered or developed “by or for the local authority”?

[17] For information to be developed by or on behalf of a public body, the person developing the information should be an official, officer or employee of the public body, be contracted to perform services, be specifically engaged in an advisory role (even if not paid), or otherwise have a sufficient connection to the public body.

[18] In its submission, the City asserted the information was developed by the third party for the City. Upon review of document #2, I find that document #2 qualifies for the second part of the test. The information in the document was created by the third party “for” the City.

[19] In conclusion, I find that the City has demonstrated that subsection 16(1)(a) of LA FOIP applies to the information severed in document #2 and this information should continue to be withheld.

2. Does subsection 17(1)(d) of LA FOIP apply?

[20] Subsection 17(1)(d) of LA FOIP is a discretionary exemption and provides:

17(1) Subject to subsection (3), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(d) information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the local authority;

[21] The City applied subsection 17(1)(d) of LA FOIP to some of the information in document #1 (Appendix G, pages G4, G5 and G6). The remainder of the document was released.

[22] The following test must be met in order for subsection 17(1)(d) of LA FOIP to be found to apply:

- i. Identify and provide details about the contractual or other negotiations and the parties involved; and
- ii. Detail how release of the record would interfere with the contractual or other negotiation.

i. Identify and provide details about the contractual or other negotiations and the parties involved

[23] In its submission, the City advised that the information related to negotiations for a new wastewater treatment plant. The City included an affidavit from a City Engineer with its submission which detailed the parties involved in the negotiations.

ii. Detail how release of the record would interfere with the contractual or other negotiation.

[24] *To interfere with contractual or other negotiations* means to obstruct or make much more difficult the negotiation of a contract or other sort of agreement involving the public body.

[25] In its submission, the City outlined how release of the information would interfere with its negotiations. From a review of document #1, if the information in the documents were released it could disadvantage the City in negotiations.

[26] Therefore, I find that the City appropriately applied subsection 17(1)(d) of LA FOIP to the information severed in document #1. Document #1 has been addressed in full.

3. Does subsection 28(1) of LA FOIP apply?

[27] 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.

[28] The City applied subsection 28(1) of LA FOIP to some information in Appendix I of document #2. In its letter to our office received September 5, 2014, the City indicated that biography information was removed except for names and positions of the individuals. In addition, any information in the biographies that was not available on the internet was removed. The individuals are employees of the City, employees of two third parties.

[29] In order for subsection 28(1) to apply, the information must first be found to qualify as “personal information” pursuant to subsection 23(1) of LA FOIP.

[30] Information must be about an identifiable individual in a personal capacity in order to qualify. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual.

[31] From a review of the information severed from Appendix I of document #2, the City removed information such as previous positions, previous projects worked on, previous boards and committees served on and educational backgrounds. The information severed in the biographies is akin to the type of information found on a resume.

[32] *Employment history* of an individual includes what would normally be found on a personnel file and includes information about the individuals work record. Therefore, I find that the information severed by the City constitutes the employment history of the individuals and is personal information pursuant to subsection 23(1)(b) of LA FOIP which provides:

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;

[33] As such, I further find that the City appropriately applied subsection 28(1) of LA FOIP to record #2. This addresses record #2 in full.

IV FINDINGS

[34] I find that the City appropriately applied subsection 17(1)(d) of LA FOIP to document #1.

[35] I find that the City appropriately applied subsections 16(1)(a) and 28(1) of LA FOIP to document #2.

V RECOMMENDATIONS

[36] I recommend the City of Regina continue to withhold the severed information in documents #1 and #2.

Dated at Regina, in the Province of Saskatchewan, this 6th day of October, 2014.

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