



REVIEW REPORT 098-2020

Prince Albert Police Service

February 3, 2021

Summary: The Applicant submitted an access to information request to the Prince Albert Police Service (PAPS) under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) for a copy of an audio recording. PAPS refused the Applicant access and claimed subsections 14(1)(c) and 28(1) of LA FOIP as its reasons. The Applicant appealed to the Commissioner. In the course of the review with the Commissioner, PAPS indicated it wanted to release portions of the audio recording to the Applicant, but did not have the ability to do so. The Commissioner found that subsection 14(1)(c) of LA FOIP applies to the audio recordings and that subsection 28(1) of LA FOIP applies to parts of the audio recordings. The Commissioner recommended that PAPS research and implement software to sever audio recordings. The Commissioner also recommended that PAPS release portions of the audio recordings to the Applicant.

I BACKGROUND

[1] On April 14, 2020, the Prince Albert Police Service (PAPS) received the following access to information request from the Applicant:

We are requesting a recording of a 911 call received on [date] wherein police were dispatched for a possible weapons/threat complaint involving [Name of Person A] and [name of Person B]. [Name of Person A] had left [redacted] in [name of location], Sask. The call would have been received between the hours of 3:00 p.m. – 5:00 p.m. on that date. The complainant was [name of Caller].

[2] The Applicant is “Person B”. In a letter dated April 15, 2020, PAPS responded to Person B’s access request. PAPS indicated that it was withholding the audio recordings pursuant

to subsection 14(1)(c) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] On April 21, 2020, the Applicant requested a review by my office.

[4] On April 24, 2020, my office notified both PAPS and the Applicant that it would be undertaking a review.

II RECORDS AT ISSUE

[5] At issue are seven audio recordings in .wav file format:

- the first audio recording is 2 minutes and 32 seconds;
- the second audio recording is 1 minute and 48 seconds;
- the third audio recording is 1 minute and 28 seconds;
- the fourth audio recording is 2 minutes and 44 seconds;
- the fifth audio recording is 2 minutes and 20 seconds;
- the sixth audio recording is 1 minute and 31 seconds; and
- the seventh audio recording is 1 minute and 25 seconds.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[6] PAPS qualifies as a “local authority” as defined by subsection 2(f)(viii.1) of LA FOIP. Therefore, I have jurisdiction to review this matter.

2. Did PAPS properly apply subsection 28(1) of LA FOIP?

[7] Individuals have a right to access their personal information subject to limited and specific exemptions. However, individuals do not have a right to other individuals’ personal information. Subsections 23(1)(a), (b), (e), (f), (g), (h) and (k) of LA FOIP define “personal information” as follows:

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:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(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;

...

(e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;

(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.

[8] It should be noted that the list of examples of personal information in subsection 23(1) of LA FOIP is not exhaustive. Information that is not listed under subsection 23(1) of LA FOIP may still qualify as personal information. As long as the information is identifiable and is personal in nature, the information would qualify as personal information.

[9] Where another individual’s personal information appears on a responsive record, local authorities may rely on subsection 28(1) of LA FOIP to withhold the information. 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.

[10] PAPS applied subsection 28(1) of LA FOIP to all seven audio recordings in their entirety. Based on a review of the audio recordings, I have broken up each of the audio recordings into segments. I listed each audio recording, their segments, and a description of each segment below.

Audio recording #1 (2 minutes and 32 seconds)

1. From 0:00 to 0:14 – Call metadata, including date and time of call.
2. From 0:15 to 1:31 – Police dispatcher conversing with caller. Caller is describing situation, contains personal information of Person A.
3. From 1:32 to 1:43 – Police dispatcher seeks information about Person B. Person B provides information about Person B.
4. From 1:44 to 2:01 – Police dispatcher seeks information about the situation. Caller provides information about the situation.
5. From 2:02 to end – Police dispatcher seeks information about the caller. Caller provides their personal information.

Audio recording #2 (1 minute and 48 seconds)

1. From 0:00 to 0:14 – Call metadata, including date and time of call.
2. From 0:15 to 0:43 – Police dispatcher seeks information about caller and Person A. Caller provides information about themselves and Person A.
3. From 0:44 to 1:10 – Police dispatcher seeks information about Person B. Caller provides information about Person B.
4. From 1:11 to end - Police dispatcher seeks information about situation. Caller provides information about the situation.

Audio recording #3 (1 minute and 28 seconds)

1. From 0:00 to 0:14 – Call metadata, including date and time of call.
2. From 0:15 to 0:24 – Police dispatcher requests confirmation about the situation. Caller provides confirmation.
3. From 0:25 to 0:42 – Police dispatcher seeks information about Person B. Caller provides information about Person B.
4. From 0:43 to 0:54 – Police dispatcher requests confirmation about the situation. Caller provides confirmation.
5. From 0:55 to end – Police dispatcher requests information about Person B. Caller provides information about Person B.

Audio recording #4 (2 minutes and 44 seconds)

1. From 0:00 to 14 – Call metadata, including date and time of call.
2. From 0:15 to 0:34 – Caller provides information about Person B to police dispatcher.
3. From 0:35 to 0:45 – Police dispatcher provides assurances to caller.
4. From 0:46 to 0:59 – Police dispatcher repeats information about Person B.
5. From 0:59 to 1:10 – Police dispatcher puts caller on hold.
6. From 1:11 to 1:25 – Police dispatcher calling Person B.
7. From 1:26 to end – Police dispatcher speaking with Person B.

Audio recording #5 (2 minutes and 20 seconds)

1. From 0:00 to 0:14 – Call metadata, including date and time of call.
2. From 0:15 to 0:36 – Police dispatcher provides update to caller.
3. From 0:36 to 0:45 – Police dispatcher requests confirmation of Caller's contact information. Caller provides confirmation
4. From 0:46 to 0:52 – Caller asks police dispatcher a question. Police dispatcher provides answer.
5. From 0:53 to 1:07 – Police dispatcher seeks information about Person A. Caller provides information about Person A.
6. From 1:08 to 1:35 – Police dispatcher seeks information about caller. Caller provides their personal information.
7. From 1:36 to end – Police dispatcher provides instructions to Caller.

Audio recording #6 (1 minute to 31 seconds)

1. From 0:00 to 0:14 – Call metadata, including date and time of call.
2. From 0:15 to 0:53 – Police dispatcher calling Person B.
3. From 0:54 to end – Police dispatcher provides summary to Person B. They converse.

Audio recording #7 (1 minute 25 seconds)

1. From 0:00 to 0:14 – Call metadata, including date and time of call.
2. From 0:15 to 0:30 – Police dispatcher calling Caller.
3. From 0:31 to 0:59 – Police dispatcher providing update on situation to caller.
4. From 1:00 to end – Caller asks question to police dispatcher. Police dispatcher provides answer.

[11] When I consider the above, I find that subsection 28(1) of LA FOIP applies to the following segments, because the contents of the dialogue contains personal information of either the Caller or Person A:

- segments 2 and 5 of audio recording #1;
- segment 2 of audio recording #2; and
- segments 3, 5, and 6 of audio recording #5.

[12] Next, I need to consider if the Caller's voice would qualify as "personal information". In my Review Report 135-2018, I stated my position that a person's voice paired with identifying information that is personal in nature qualifies as "personal information". In that report, I relied on Orders F2009-044 and P2011-003 by Alberta's Office of the Information and Privacy Commissioner (AB IPC). The AB IPC found that a person's voice paired with other information qualifies as personal information. Furthermore, AB IPC provided that a person's voice, tone and inflection could also qualify as personal information. In this case, any segment containing the caller's voice qualifies as "personal information". I find that subsection 28(1) of LA FOIP also applies to all of the segments **except** for the following segments:

- segment 1 of audio recording #1;
- segment 1 of audio recording #2;
- segment 1 of audio recording #3;
- segments 1, 6 and 7 of audio recording #4;
- segment 1 of audio recording #5;
- segments 1, 2, 3 of audio recording #6; and
- segment 1 of audio recording #7.

[13] In other words, I do not find that subsection 28(1) of LA FOIP applies to the segments listed in paragraph [12] because they do not contain the Caller's voice.

3. Did PAPS properly apply subsection 14(1)(c) of LA FOIP?

[14] PAPS applied subsection 14(1)(c) of LA FOIP to all of the records at issue in their entirety.

[15] Subsection 14(1)(c) of LA FOIP provides as follows:

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;

[16] My office uses the following test to determine if subsection 14(1)(c) of LA FOIP applies:

1. Does the local authority'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.

[17] Below, I will determine if both parts of the test is met for each of the records.

1. Does the local authority's activity qualify as a "lawful investigation"?

[18] Page 50 of my office's *Guide to FOIP* (Updated February 4, 2020) (Guide to FOIP) defines "lawful investigation" as an investigation that is authorized or required and permitted by law. The local authority should identify the legislation under which the investigation is occurring. Subsection 15(1)(c) of FOIP is the equivalent of subsection 14(1)(c) of LA FOIP.

[19] In its submission, PAPS noted that firearm related offences fall under section 88 of the Criminal Code of Canada (the Criminal Code). After being contacted by the Caller, PAPS initiated a lawful police investigation of a criminal code offence. At the conclusion of its lawful investigation, PAPS charged the suspect with threatening under section 810 of the Criminal Code.

[20] I find that the first part of the test for subsection 14(1)(c) of LA FOIP is met.

2. Does one of the following exist? a) the release of the information would interfere with a lawful investigation, or b) the release of information would disclose information with respect to a lawful investigation.

[21] In its submission, PAPS put forward the argument that the release of the information would disclose information with respect to a lawful investigation. Therefore, to meet this part of the test, it is only necessary for PAPS to demonstrate that the information in the record is information with respect to a lawful investigation.

[22] In its submission, PAPS asserted that the audio recordings relate to the lawful investigation authorized by sections 88 and 810 of the *Criminal Code of Canada*. Based on a review of the audio recordings, I find that they are indeed related to the lawful investigation.

[23] Since both parts of the test are met, I find that PAPS properly applied subsection 14(1)(c) of LA FOIP to the audio recordings.

4. Did PAPS meet its obligation pursuant to section 8 of LA FOIP?

[24] Subsection 8 of LA FOIP provides:

8 Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.

[25] When a local authority receives an access to information request and the contents of the responsive records contain text, then it must complete a line-by-line analysis of the responsive records to comply with section 8 of LA FOIP. In the case of audio recordings, the local authority must review the audio in its entirety to determine which parts can or cannot be disclosed.

[26] It is noted that the segments 6 and 7 of audio recording #4 (starting at the 1 minute and 11 second mark to the end) and all of audio recording #6 contain conversations between the Police Dispatcher and the Applicant. In the past, I have said it would be an absurd result to withhold from an applicant who already has knowledge of what has been discussed. In its submission, PAPS acknowledged that portions of the audio recordings include a Police Dispatcher speaking with the Applicant. PAPS indicated that it had no issue with releasing these particular portions of the recordings to the Applicant. In other words, it would

exercise its discretion to release these particular portions of the recordings to the Applicant instead of withholding them pursuant to subsection 14(1)(c) of LA FOIP. In an effort to do so, PAPS indicated that it contacted its software service provider to determine if the software could redact portions of the audio recording so as to release portions of the audio recordings involving the Applicant. Unfortunately, its service provider indicated there are no capabilities within the software to redact portions of the audio recordings.

[27] I note that subsection 10(2) of LA FOIP provides that if a record is in electronic form, then the local authority must give access to the record in electronic form in certain circumstances. Subsection 10(2) of LA FOIP provides:

10(2) Subject to subsection (3), if a record is in electronic form, a head shall give access to the record in electronic form if:

(a) it can be produced using the normal computer hardware and software and technical expertise of the local authority;

(b) producing it would not interfere unreasonably with the operations of the local authority; and

(c) it is reasonably practicable to do so.

(3) If a record is a microfilm, film, sound or video recording or machine-readable record, a head may give access to the record:

(a) by permitting the applicant to examine a transcript of the record;

(b) by providing the applicant with a copy of the transcript of the record; or

(c) in the case of a record produced for visual or aural reception, by permitting the applicant to view or hear the record or by providing the applicant with a copy of it.

[Emphasis added]

[28] While I find that PAPS has made some effort to meet its obligation under section 8 of LA FOIP by contacting its software service provider, I recommend that it explore other software for severing audio recordings. After all, the audio recordings are in .wav format so the audio recordings can be redacted using other software. For example, Microsoft PowerPoint (PowerPoint) is a commonly used application among organizations. Given that the conversations between the Police Dispatcher and the Applicant appear at the end of audio recording #4, PAPS could consider using PowerPoint to trim the .wav file for

audio recording #4. Then, PAPS can save the trimmed file as a separate media file to be released to the Applicant. This is not an ideal solution for redacting any and all audio recordings in all cases. However, in this case, this might be a possible solution to release at least segments 6 and 7 of audio recording #4 to the Applicant. I recommend that PAPS release segments 6 and 7 of audio recording #4.

[29] I also recommend that since audio recording #6 does not contain the personal information of Person A or the Caller (but only contains the call metadata and a conversation between the Police Dispatcher and the Applicant), that PAPS release audio recording #6 in its entirety to the Applicant.

[30] Going forward, I recommend that PAPS research and implement software that it can use to sever audio recordings and report their progress in 30 days from receiving the final report to my office. An example of such software is Audacity. Such software will be important in helping PAPS meet its obligations under section 8 of LA FOIP. Further, such software will enable the head of PAPS to exercise its discretion and release as much information as it can to applicants to ensure it remains accountable and transparent to the public, which is one of the main purposes of LA FOIP.

[31] However, if PAPS determines it is unable to release segments 6 and 7 of audio recording #4 and/or audio recording #6, then I recommend that it provide a transcript to the Applicant pursuant to subsection 10(3) of LA FOIP.

[32] If it is due to the lack of severing software that PAPS withheld the audio recordings in their entirety, I recommend that once PAPS implements such software, that it release additional segments of the audio beyond segments 6 and 7 of audio recording #4 and all of audio recording #6. This would include releasing segment 1 of each of the audio recordings.

IV FINDINGS

[33] I find that subsection 28(1) of LA FOIP applies to all of the segments **except** for the following segments:

- segment 1 of audio recording #1;
- segment 1 of audio recording #2;
- segment 1 of audio recording #3;
- segments 1, 6 and 7 of audio recording #4;
- segment 1 of audio recording #5;
- segments 1, 2, 3 of audio recording #6; and
- segment 1 of audio recording #7.

[34] I find that PAPS properly applied subsection 14(1)(c) of LA FOIP to the records at issue.

[35] I find that PAPS has made some effort to meet its obligation under section 8 of LA FOIP by contacting its software service provider.

V RECOMMENDATIONS

[36] I recommend that PAPS release segments 6 and 7 of audio recording #4 to the Applicant as described at paragraph [28].

[37] I recommend that PAPS release audio recording #6 in its entirety to the Applicant as described at paragraph [29].

[38] I recommend that PAPS research and implement software so that it can sever audio recordings and report their progress in 30 days from receiving the final report to my office.

[39] If PAPS determines it is unable to release segments 6 and 7 of audio recording #4 and/or audio recording #6, then I recommend that it provide a transcript to the Applicant pursuant to subsection 10(3) of LA FOIP.

[40] If it is due to the lack of severing software that PAPS withheld the audio recordings in their entirety, I recommend that once PAPS implements such software, that it release additional segments of the audio beyond segments 6 and 7 of audio recording #4 and all of audio recording #6 as described at paragraph [32]. This would include releasing segment 1 of each of the audio recordings.

Dated at Regina, in the Province of Saskatchewan, this 3rd day of February, 2021.

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