



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 107-2018

City of Saskatoon

May 6, 2019

Summary:

The City of Saskatoon (the City) responded to an access to information request pursuant to subsection 7(2)(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) advising the Applicant the record would be published within 90 days. The Commissioner found the City properly applied subsection 7(2)(c) of LA FOIP and recommended it take no further action on this file. The Commissioner also recommended that when *The Freedom of Information and Protection of Privacy Act* (FOIP) and LA FOIP are next amended, the Ministry of Justice amend subsections 7(2)(c) of FOIP and LA FOIP to reduce the timeframe from 90 days to 30 days.

I BACKGROUND

[1] The Applicant submitted an access to information request that was received by the City of Saskatoon (the City) on January 23, 2018, requesting access to:

I would like to see the results of a survey of City of Saskatoon employees that was conducted in 2017. Comments from the survey were referenced by Mayor Charlie Clark in the City Council Meeting in December 2017.

[2] The City spoke with the Applicant on January 31, 2018, to clarify the request. In that conversation, the Applicant clarified that it was the survey related to employee engagement, similar to what the City of Edmonton had recently done.

[3] By letter dated February 7, 2018, the City responded to the request. In its response, the City advised the Applicant the record would be published within 90 days and where the Applicant could obtain a copy of the record at that time pursuant to subsection 7(2)(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[4] My office received a Request for Review on June 4, 2018, disputing the City's use of subsection 7(2)(c) of LA FOIP. In the Request for Review, the Applicant noted, in part:

...Although the information has since been released, I would still like to appeal the City's decision. The City's rationale that it is not obliged to release information until its ready has wide-ranging implications.

[5] On June 14, 2018, my office notified the City and the Applicant of our intention to undertake a review and invited both parties to make a submission. We received a submission from both the City and the Applicant.

II RECORDS AT ISSUE

[6] There are no records at issue as this review will determine if the City properly applied subsection 7(2)(c) of LA FOIP in its response to this request.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[7] The City is a "local authority" pursuant to subsection 2(f)(i) of LA FOIP. Therefore, I have the authority to conduct this review.

2. Did the City properly apply subsection 7(2)(c) of LA FOIP?

[8] Subsection 7(2) of LA FOIP outlines the way in which a Head of a public body must respond to access to information requests. In its response to the Applicant, the City cited subsection 7(2)(c) of LA FOIP, which provides:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

...
(c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;

[9] In Investigation Report 249-2017 (Ministry of Justice), I adopted the *Black's Law Dictionary* (fifth edition) definition of "published." Paragraph [7] of Investigation Report 249-2017 states:

[7] My office has not defined "published" in the past. The Ontario Information and Privacy Commissioner adopted a definition of "published" from *Black's Law Dictionary* (fifth edition) as follows: "to make known in general...An advising of the public or making known of something to the public for a purpose." I also adopt this definition.

[10] From a review of what was provided to the Applicant, I am satisfied that this information meets the definition of "published".

[11] From a review of the correspondence, the City met its section 7 obligations. The Access to Information request was received January 23, 2018, and responded to within 30 days on February 7, 2018. In the February 7, 2018 response letter, the Applicant was advised:

...The record you have requested will be published within the next 90 days. The approximate date of publication is mid-March. You can contact me at [employee email] to ask for a copy after this date. This notification has been provided pursuant to section 7(2)(c) of [LA FOIP]...

[12] I note that the City advised that the record would be published within the 90 days provided for under subsection 7(2)(c) of LA FOIP.

[13] In its submission, the City outlined that a report would be going forward to the Standing Policy Committee on Environment, Utilities and Corporate Services Committee (SPC on EUCS) on March 12, 2018. In the City's response letter, the Applicant was advised that the report would be published mid-March. That date aligns with the date the report was presented to the SPC on EUCS.

[14] The Applicant argued that the City declining to release information in its possession until it is ready seems contrary to the idea of open government. The Applicant further outlined that the City is advancing an open data program to allow presumed unfettered access of City information and the delay appears contrary to the spirit of open data. Finally, the Applicant asserted that in an age when technology makes the sharing of information and transparency easy, this decision seems rooted in another era.

[15] Regardless if the Applicant feels the information should have been provided more quickly, it was made available at the time of publication within the timeframe provided for in subsection 7(2)(c) of LA FOIP.

[16] However, although the City was within the statutory timeframe I do agree with the Applicant. My office recommended a change from the 90 days in March 2015 - *It's Time for an Update: Proposals for Amendments to The Freedom of Information and Protection of Privacy Act and The Local Authority Freedom of Information and Protection of Privacy Act*. My proposed amendment was to reduce the publication date timeframe from 90 days and noted that 30 days would be reasonable. My reasoning outlined in the proposed amendments was, "with today's web sites and the ease of publication, it is reasonable now to shorten this time."

[17] Unfortunately, subsections 7(2)(c) of FOIP and LA FOIP have not been amended. In fact, they have not been amended since these statutes were passed in 1992 and 1993 - a time when many of the technologies of today were non-existent. It is now time to modernize this timeframe in FOIP and LA FOIP to align with today's technology.

[18] Nevertheless, I find the City properly applied subsection 7(2)(c) of LA FOIP.

IV FINDING

[19] I find the City properly applied subsection 7(2)(c) of LA FOIP.

V RECOMMENDATIONS

[20] I recommend the City take no further action on this file.

[21] I recommend that when FOIP and LA FOIP are next amended, the Ministry of Justice amend subsections 7(2)(c) of FOIP and LA FOIP to reduce the timeframe from 90 days to 30 days.

Dated at Regina, in the Province of Saskatchewan, this 6th day of May, 2019.

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