



REVIEW REPORT 112-2018

Saskatoon Board of Police Commissioners

May 28, 2019

Summary:

The Applicant requested records from the Saskatoon Board of Police Commissioners (the Board). The Board provided a response to the Applicant indicating that access was denied pursuant to subsection 15(1)(b)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant requested a review by the Office of the Information and Privacy Commissioner (IPC). During the review, the Board added subsections 15(1)(b)(ii), 16(1)(a), (b), (c), (d), (e) and the personal information exemption of LA FOIP as reason to withhold the records. The Board also asserted that some of the records were not responsive to the access to information request. Upon review, the Commissioner found that the Board had appropriately applied subsections 15(1)(b)(i) and 28(1) of LA FOIP to some of the records. Further, the Commissioner found that some of the records were responsive to the access to information request. Finally, the Commissioner found that the Board did not appropriately apply subsections 16(1)(a), (b), (c), (d) or (e) of LA FOIP to the remaining records. The Commissioner recommended that the Board withhold the records found to be exempt and release the remaining records.

I BACKGROUND

- [1] On January 23, 2018, the Saskatoon Board of Police Commissioners (the “Board”) received the following access to information request from the Applicant:

I would like as much information as possible on the search for a new Saskatoon Police Chief that culminated in the selection of Troy Cooper. This includes, but is not limited to, the number of candidates, the number of applicants interviewed and the interview questions.

- [2] In a letter dated January 30, 2018, the Board provided its response to the Applicant indicating that the request was refused citing subsection 15(1)(b)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [3] On June 4, 2018, my office received a Request for Review from the Applicant in which the Applicant disagreed with the Board's application of the above provision.
- [4] On June 15, 2018, my office notified the Board and the Applicant of my office's intent to undertake a review. My office requested the Board send my office a copy of the record and its submission in support of subsection 15(1)(b)(i) of LA FOIP. A package was received from the Board on July 31, 2018. The Board included additional exemptions it was relying on to withhold the records from the Applicant.
- [5] In a letter dated July 31, 2018, the Board also sent a letter to the Applicant advising him that the Board was now relying on additional exemptions to withhold the records. The additional exemptions included subsections 15(1)(b)(ii), 16(1)(a), (c), (d), (e), 23(1)(g) and (k) of LA FOIP. In its submission to my office, the Board also included subsection 16(1)(b) of LA FOIP.

II RECORDS AT ISSUE

- [6] The record consists of 27 pages of documents including emails, *in-camera* Board meeting minutes, interview questions and reports. All 27 pages have been withheld in full.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [7] For the Board to qualify as a local authority, it must be captured in one of the definitions of a local authority under subsection 2(f) of LA FOIP.
- [8] Subsection 2(f)(v) of LA FOIP provides that:

2 In this Act:

...
(f) “**local authority**” means:

...
(v) any board, commission or other body that:

(A) is appointed pursuant to *The Cities Act*, *The Municipalities Act* or *The Northern Municipalities Act, 2010*; **and**

(B) is prescribed;

[Emphasis added]

[9] Both parts of the above provision must be met. In terms of subsection 2(f)(v)(A) of LA FOIP, subsection 8(1) of *The Cities Act* provides authority to a city to create bylaws. Subsections 8(1)(a) and (b) provide:

8(1) A city has a general power to pass any bylaws for city purposes that it considers expedient in relation to the following matters respecting the city:

(a) the peace, order and good government of the city;

(b) the safety, health and welfare of people and the protection of people and property;

...

[10] *The Police Act, 1990*, contemplates a municipality creating a board of police commissioners by bylaw. The City of Saskatoon gets its power to make bylaws under *The Cities Act*. Therefore, I find that the City, by a bylaw under *The Cities Act*, establishes the Board.

[11] In terms of subsection 2(f)(v)(B) of LA FOIP, Part I of the Appendix of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) provides that boards established pursuant to *The Cities Act* qualify as local authorities.

[12] In conclusion, I find that the Board is a local authority pursuant to subsection 2(f)(v) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did the Board properly apply subsection 15(1)(b)(i) of LA FOIP?

[13] Subsection 15(1)(b)(i) of LA FOIP is a discretionary exemption and provides:

15(1) A head may refuse to give access to a record that:

...

(b) discloses agendas or the substance of deliberations of meetings of a local authority if:

(i) an Act authorizes holding the meetings in the absence of the public;

...

[14] In order for subsection 15(1)(b)(i) of LA FOIP all three parts of the following test must be met:

1. Has a meeting of a council, board, commission or other body or a committee of one of them taken place?
2. Does a statute authorize the holding of the meeting in the absence of the public?
3. Would disclosure of the record reveal the agenda or substance of the deliberations of the meeting?

[15] A local authority seeking to rely on this exemption must establish that the local authority's meeting in question is a properly constituted *in camera* meeting. Further, provide information concerning when the in camera meeting was held and details of the subject matter or substance of the deliberations of the meeting.

[16] The Board applied subsection 15(1)(b)(i) of LA FOIP to five documents or 16 pages. The documents constitute Board meeting minutes, Board resolutions and emails. The Board withheld all of the information on these pages.

1. Has a meeting of a council, board, commission or other body or a committee of one of them taken place?

[17] The Board did not indicate in its submission when a board meeting or meetings took place. However, it is clear that multiple meetings of the Board took place as the documents constituting meeting minutes indicate as such.

2. Does a statute authorize the holding of the meeting in the absence of the public?

[18] The Board asserted that its authority to hold meetings in absence of the public can be found at subsection 27(15) of *The Police Act, 1990* which provides:

27(15) The board may conduct meetings in private that relate to contract negotiations, personnel, security or any other matter where, in the board's opinion, there are privacy issues that require the matter to be dealt with in private.

[19] The further question to ask is whether the purpose of the meeting was to deal with the specific subject matter described in the statute authorizing the holding of a closed meeting. Upon review of the documents, it is clear the purpose of the meetings related to recruiting a police chief. Therefore, the meetings relate to personnel as provided for in subsection 27(1) of *The Police Act, 1990*.

3. Would disclosure of the record reveal the agenda or substance of the deliberations of the meeting?

[20] A *deliberation* is a discussion or consideration of the reasons for and against an action. It refers to discussions conducted with a view towards making a decision.

[21] *Substance* generally means more than just the subject or basis of the meeting. Rather, it is the essential or material part of the deliberations themselves.

[22] The Board did not provide any arguments for this part of the test. However, on the face of the documents, it is clear that if the *in camera* meeting minutes, resolution and email were released, it would reveal the agenda and substance of the deliberations that occurred at each of the meetings.

[23] The content of the email refers to a motion passed at one of the *in camera* meetings and is specific to a particular candidate. It appears to be follow-up from one of the meetings. Therefore, it flows directly from the *in camera* meetings and actions that must be taken.

[24] In conclusion, I find that the Board appropriately applied subsection 15(1)(b)(i) of LA FOIP to the five documents constituting *in camera* meeting minutes, in camera resolution and the email of January 4, 2018.

[25] The Board also asserted that personal information was contained in the email of January 2, 2018. However, the personal information exemption does not need to be addressed in this report as the email has been found to be exempt from release under subsection 15(1)(b)(i) of LA FOIP.

3. Did the Board properly apply subsection 16(1)(c) of LA FOIP?

[26] Subsection 16(1)(c) 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:

...

(c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the local authority, or considerations that relate to those negotiations.

[27] In order for subsection 16(1)(c) of LA FOIP to apply, the following three part test must be met:

1. Does the record contain positions, plans, procedures, criteria, instructions or considerations that relate to the contractual or other negotiations?
2. Were they developed for the purpose of contractual or other negotiations?
3. Were the contractual or other negotiations being conducted by or on behalf of a public body?

[28] Examples of the type of information captured by this provision include various positions developed by a local authority's negotiators in relation to labour, financial and commercial contracts.

[29] The Board applied subsection 16(1)(c) of LA FOIP to five documents or nine pages constituting interview schedules, agendas, interview questions and a plan and schedule for the police chief recruitment. The Board withheld all of the information on these pages.

1. Does the record contain positions, plans, procedures, criteria, instructions or considerations that relate to the contractual or other negotiations?

[30] In its submission, the Board asserted that the documents contain plans, criteria or instructions.

[31] A *plan* is a formulated and especially detailed method by which a thing is to be done, a design or scheme.

[32] *Criteria and instructions* are much broader in scope, covering information relating to the factors involved in developing a particular negotiating position or plan.

[33] The Board did not explain how the information constituted plans, criteria or instructions. However, from a review of the contents of the documents, some of the documents do not appear to qualify.

[34] The document titled, *Interview Schedule – Round 1*, does not appear to qualify. It includes two dates and two locations for interviews of candidates. It lists times and names of the individuals that had interviews scheduled under these two dates. In the broadest sense, it is a plan in that it lists individuals that have scheduled interviews. However, exemptions to the right of access are to be interpreted as limited and specific and are not intended to be interpreted so broadly. If it were interpreted this broadly, nothing would be accessible to the public. Further, this occurred in 2017 so it is not clear why some of this information could not be released such as the heading on the page, the dates and locations of the interviews. The names of the candidates should be withheld as personal information pursuant to subsection 23(1)(k) of LA FOIP. The remainder of the page should be released. Therefore, I find that the interview schedule would not constitute a detailed method or plan. It would also not constitute criteria or instructions.

- [35] The document titled, *Round 2 Interviews, Agenda*, does not appear to qualify. It is a basic one-page agenda that includes dates, times and activities. Some of these activities include lunch breaks and meetings with no details of what the meetings are about. There are also candidates listed to be interviewed. Again, this is a plan in the broadest sense but the exemption has been interpreted too broadly by the Board. The names of the candidates should be withheld as personal information pursuant to subsection 23(1)(k) of LA FOIP. The remainder of the page should be released. Therefore, I find that the agenda would not constitute a detailed method or plan. It would also not constitute criteria or instructions.
- [36] The remaining documents are the *First Interview Questions, Second Interview Questions* and the *Recruitment Plan and Schedule*. These documents contain a detailed method and plan for hiring a police chief. I find that these documents meet the first part of the test.

2. Were they developed for the purpose of contractual or other negotiations?

- [37] A *negotiation* is a consensual bargaining process in which the parties attempt to reach agreement. It can also be defined as dealings conducted between two or more parties for the purpose of reaching an understanding. It connotes a more robust relationship than “consultation”. It signifies a measure of bargaining power and a process of back-and-forth, give-and-take discussion (*Sangan’s Encyclopedia of Words and Phrases Legal Maxims*, Canada, 5th Edition, Volume 3, at p. N-54)
- [38] The Board did not address each part of the three part test. It would have been more helpful if it did. I am left to make a determination based on the face of the records. It is clear the documents were developed for the purpose of recruiting a police chief. Once a candidate is selected, the Board begins negotiations with the candidate with hopes of entering into an employment agreement. Therefore, the contractual or negotiation process begins when a candidate is selected. The documents were prepared for the purpose of selecting a candidate so negotiations had not begun yet. Once negotiations start, these documents would not be used in the negotiation process as they were intended for recruitment.

[39] Therefore, I find that the *First Interview Questions*, *Second Interview Questions* and the *Recruitment Plan and Schedule* do not meet the second part of the test. As such, I find that subsection 16(1)(c) of LA FOIP was not appropriately applied.

[40] The Board also asserted that the *First Interview Questions* and *Second Interview Questions* were not responsive to the access to information request. I will address this later in the report. The Board also applied subsections 16(1)(a), (b), (d) and (e) of LA FOIP to questions 14 and 15 of the *Second Interview Questions*. I will address this later in the report. Finally, the Board also applied the personal information exemption to the *Second Interview Questions* and the *Recruitment Plan and Schedule*. I will address this exemption next.

4. Did the Board properly apply subsection 28(1) of LA FOIP?

[41] When dealing with information in a record that appears to be personal information, the first step is to confirm the information indeed qualifies as personal information pursuant to subsection 23(1) of LA FOIP. Part of that consideration involves assessing if the information has both of the following:

1. Is there an identifiable individual?
2. Is the information personal in nature?

[42] Once identified as personal information, the local authority needs to consider subsection 28(1) of LA FOIP which 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.

[43] The Board withheld information on three documents or eight pages citing subsections 23(1)(b), (d), (e), (g) and (k) of LA FOIP. The three documents are the *Second Interview Questions*, the *Recruitment Plan and Schedule* and an email dated November 26, 2017.

[44] Subsections 23(1)(b), (d), (e), (g) and (k) of LA FOIP provide:

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;

...

(d) any identifying number, symbol or other particular assigned to the individual;

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

...

(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.

[45] For the *Second Interview Questions*, the Board asserted that the individual names and the questions 8, 9 and 10 for each individual that appear in the document are personal information.

[46] A name by itself does not constitute personal information unless releasing the name also reveals something of a personal nature about the individual. For example, the name combined with the home address, home phone number or age of the individual (*Griffiths v. Nova Scotia (Education)*, [2007] NSSC 178, Review Reports F-2012-006 at [146], F-2014-005 at [10], Review Report 195-2015 & 196-2015 at [17]).

[47] In this case, the names on the document are candidates being interviewed. By releasing the names, it would reveal that these individuals were interviewed for the position of police chief. It would also reveal whether they were the successful candidate or not as the position

has now been filled. This qualifies as the personal information of these individuals pursuant to subsection 23(1)(k) of LA FOIP.

[48] Therefore, I find that the names and questions at 8, 9 and 10 for the candidates constitute the personal information of the individuals pursuant to subsection 23(1)(k)(i) and (ii) of LA FOIP. This information should continue to be withheld pursuant to subsection 28(1) of LA FOIP. The Board also applied subsections 16(1)(a), (b), (d) and (e) to some of the information on this document. I will consider these provisions later in this report.

[49] For the *Recruitment Plan and Schedule*, the Board did not identify what constituted personal information on the document. Rather it stated “the document may disclose personal information such as employment history.”

[50] Upon review of the document, I cannot identify any personal information. Therefore, I find that it does not contain personal information as defined at subsection 23(1) of LA FOIP and the information should not be withheld pursuant to subsection 28(1) of LA FOIP. There were no further exemptions put forward by the Board for this document. Therefore, as I have found that neither subsection 16(1)(c) or 23(1) apply to this document, the Board should release it.

[51] For the email dated November 26, 2017, the Board asserted that the email contained personal information pursuant to subsections 23(1)(b) (employment history), (d) (number, symbol or other identifier assigned to the individual), (e) (business address) and (g) (correspondence intended to be confidential) of LA FOIP.

[52] From a review of the email, I agree with the Board. I find that there is personal information of the candidate contained in the email including employment history and the email address for the candidate. It is also an email sent by the candidate in response to correspondence received by the Board. It is marked explicitly as confidential and the content would imply its confidentiality. Therefore, I find that the Board appropriately applied subsections 23(1)(b), (e) and (g) of LA FOIP.

5. Is the information in the record responsive to the access request?

[53] When a local authority receives an access to information request, it must determine what information is responsive to the access request. *Responsive* means relevant. The term describes anything that is reasonably related to the request. It follows that any information or records that do not reasonably relate to an applicant's request will be considered "not-responsive". An applicant's access request itself sets out the boundaries of relevancy and circumscribes the records or information that will ultimately be identified as being responsive.

[54] The purpose of LA FOIP is best served when a local authority adopts a liberal interpretation of a request. If a local authority has any doubts about its interpretation, it has a duty to assist an applicant by clarifying or reformulating it.

[55] As noted earlier, the Applicant's request was for:

I would like as much information as possible on the search for a new Saskatoon Police Chief that culminated in the selection of Troy Cooper. This includes, but is not limited to, the number of candidates, the number of applicants interviewed and the interview questions.

[56] The Board submitted that the documents titled, *First Interview Questions* and *Second Interview Questions* were not responsive because no minutes were kept of the meetings and there is no document that confirms whether these questions were in fact asked of any one candidate or whether additional questions not outlined in the document were asked of any one candidate. The Board also explained in its submission where the interviews were held and who was in attendance.

[57] The access request is very broad and clearly requested anything related to the search and recruitment of a new police chief. The Applicant did not limit the request in any way, for example, asking for only documents that pertained to the selected candidates.

[58] The interview questions are documents created for the purpose of searching and recruiting a new police chief so regardless of who attended the interviews and whether these exact questions were asked is not relevant. Therefore, I find that the *First Interview Questions* and *Second Interview Questions* are responsive to the access request.

[59] The Board provided no further exemptions for the *First Interview Questions*. Therefore, I recommend this document be released to the Applicant.

[60] For the *Second Interview Questions*, the Board also applied subsections 16(1)(a), (b), (d) and (e) to questions 14 and 15 in the document. I will consider these provisions next.

6. Did the Board appropriately apply subsections 16(1)(a), (b), (d) or (e) of LA FOIP?

[61] Subsections 16(1)(a), (b), (d) and (e) of LA FOIP are discretionary exemptions and provide:

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;
- (b) consultations or deliberations involving officers or employees of the local authority;
- ...
- (d) plans that relate to the management of personnel or the administration of the local authority and that have not yet been implemented; or
- (e) information, including the proposed plans, policies or projects of the local authority, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

[62] The Board applied subsections 16(1)(a), (b), (d) and (e) of LA FOIP to questions 14 and 15 of the document titled, *Second Interview Questions*. In its submission, the Board asserted that these four provisions applied because “questions 14 and 15 are questions involving solicitation by the Board for advice under any of Section 16(1)(a), (b), (c), (d), or (e).” No further arguments were provided.

- [63] On the face of the record, none of these four exemptions would appear to apply. Questions 14 and 15 pose hypothetical scenarios posed at a candidate for police chief. There is no evidence of any advice from officials including consultations or deliberations, plans or positions or a pending policy or budgetary decision.
- [64] Section 51 of LA FOIP places the burden of establishing that an exemption applies on the local authority. Each of these provisions are intended to capture different types of information that may be withheld. The Board's brief argument for all four provisions is not sufficient to assist me in understanding how these exemptions may apply.
- [65] Therefore, I find that the Board did not appropriately apply subsections 16(1)(a), (b), (d) and (e) of LA FOIP to questions 14 and 15 of the document titled, *Second Interview Questions*.
- [66] My office shared its preliminary findings and recommendations with the Board on May 10, 2019. On May 17, 2019, the Board indicated that it would fully comply with my office's recommendations below.

IV FINDINGS

- [67] I find that the Board appropriately applied subsection 15(1)(b)(i) of LA FOIP to the five documents constituting in camera meeting minutes, in camera resolution and the email of January 4, 2018.
- [68] I find that the Board appropriately applied subsections 23(1)(k)(i), (ii) and 28(1) of LA FOIP to the names and questions at 8, 9 and 10 for the candidates on the *Second Interview Questions*.
- [69] I find that the Board did not appropriately apply subsection 16(1)(c) of LA FOIP to the *Interview Schedule – Round 1*, the *Round 2 Interviews, Agenda*, the *First Interview Questions*, the *Second Interview Questions* and the *Recruitment Plan and Schedule*.

- [70] I find that the Board appropriately applied subsections 23(1)(k) and 28(1) of LA FOIP to the *Interview Schedule – Round 1* and the *Round 2 Interviews, Agenda*.
- [71] I find the Board did not appropriately apply subsections 23(1) and 28(1) of LA FOIP to the *Recruitment Plan and Schedule*.
- [72] I find that the Board appropriately applied subsections 23(1)(b), (e), (g) and 28(1) of LA FOIP to the email dated November 26, 2017.
- [73] I find that the *First Interview Questions* and *Second Interview Questions* are responsive to the access request.
- [74] I find that the Board did not appropriately apply subsections 16(1)(a), (b), (d) and (e) of LA FOIP to questions 14 and 15 of the document titled, *Second Interview Questions*.

V RECOMMENDATIONS

- [75] I recommend the Board continue to withhold the five documents constituting *in camera* meeting minutes, *in camera* resolution and the email of January 4, 2018.
- [76] I recommend that the Board withhold the names of candidates on the *Interview Schedule – Round 1* and the *Round 2 Interviews, Agenda* and release the remainder of the information to the Applicant.
- [77] I recommend the Board continue to withhold the names and questions at 8, 9 and 10 for the candidates on the *Second Interview Questions* and release the remainder of the document.
- [78] I recommend the Board release the *Recruitment Plan and Schedule*.
- [79] I recommend the Board continue to withhold the email dated November 26, 2017.
- [80] I recommend the Board release the *First Interview Questions*.

Dated at Regina, in the Province of Saskatchewan, this 28th day of May 2019.

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