



REVIEW REPORT 156-2017 & 264-2017

Rural Municipality of Manitou Lake No. 442

November 24, 2017

Summary:

The Rural Municipality of Manitou Lake No. 442 (the RM) received an access to information request from a councillor for records relating to a different review with my office and the RM's human resources committee. The RM withheld most responsive records in full pursuant to subsections 13(1)(b), 13(2), 14(1)(a), (a.1), (c), (d), (e), (f), (g), (i), (k), 15(1)(b)(i), 18(1)(b) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found that the RM demonstrated that minutes of the human resources committee did not exist. However, he also found that there should be additional responsive records and that the records identified were in the possession and control of the RM. The Commissioner found that subsection 28(1) of LA FOIP applied to portions of the record but that none of the other exemptions applied to the record. He made several recommendations with respect to the record and the policies and procedures of the RM.

I BACKGROUND

[1] On July 6, 2017, the Rural Municipality of Manitou Lake No. 442 (the RM) received an access to information request from a councillor for the following:

1. All correspondence between RM 442 + SK Information and Privacy Commissioner's office in the past 12 months esp file # 097-2017.
2. The HR Committee min. + complaint that led to the recommendation to terminate as per Apr 6/17 motion "terminate 17/082".
3. HR Committee Minutes + complaint that caused the Apr 11/17 letter to be written to [a councillor]

- [2] On July 25, 2017, the RM responded to the Applicant's request indicating that access to the responsive records were denied pursuant to subsections 14(1)(a), (c), (d), (f), (k) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [3] The Applicant was dissatisfied with the RM's request and requested a review by my office on July 31, 2017. On August 1, 2017, my office provided notification to the Applicant and the RM of my intention to undertake a review under file 156-2017. My office asked that the RM provide a copy of the record, an Index of Records and a submission no later than August 16, 2017.
- [4] On August 2, 2017, the RM provided a response to my office, which did not include a copy of the record or an Index of Records.
- [5] After reviewing the RM's response, my office replied to the RM on October 6, 2017. My office asked again for a copy of the record and an Index of Records. My office also indicated that the RM's submission did not have enough information with respect to the exemptions it applied. My office provided an explanation as to the type of information required. My office asked for a second submission no later than October 20, 2017.
- [6] On October 13, 2017, the RM provided some responsive records to the Applicant.
- [7] On October 16, 2017, the RM provided a second response to my office. It indicated that there were no minutes responsive to the second part of the Applicant's request, which was not indicated in its response to the Applicant dated July 25, 2017. It provided information regarding its search. It also indicated that subsection 15(1)(b)(i) of LA FOIP applied to the record.
- [8] My office asked the Applicant if he was satisfied with the RM's response that records did not exist. He was not and asked for a review of this issue. On October 27, 2017, my office opened file 264-2017 and issued notifications to both the RM and the Applicant.
- [9] The RM's response dated October 16, 2017 included responsive records and another short submission, but no Index of Records.

- [10] On October 27, 2017, my office provided an Index of Records created by my office which included numerous specific questions about the record to the RM. My office did this because the RM was inexperienced with reviews. My office will not do it again for the RM. The RM was asked to answer the questions and indicate what exemptions were being applied to each record.
- [11] On October 30, 2017, the RM provided a paginated copy of the record, which included correspondence with my office concerning the current file, records already released to the Applicant and records that were not previously provided to my office. It also provided my office with another short submission and a less detailed version of the Index of Records. Instead of listing the documents one by one, as my office's index had done, the RM represented only the groups of types of records. The Index of Records also introduced the application of subsections 13(1)(b), 13(2), 14(1)(a.1), (e), (g), (i) and 18(1)(b) of LA FOIP. It did not address the Application of these additional exemptions in a submission. Further, the Index of Records did not indicate where subsection 15(1)(b)(i) of LA FOIP applied to the record.
- [12] On November 1, 2017, my office contacted the RM to ask for contact information for third party exemptions, namely subsection 18(1)(b) of LA FOIP. The RM indicated that it was mistaken in applying subsection 18(1)(b) of LA FOIP and it would not be an issue in this review.
- [13] On November 15, 2017 my office sent a draft report to the RM for fact checking. The RM spoke with my office on November 16, 2017 and indicated that some of the records were the personal records of an RM employee. My office explained possession and control to the RM. The RM was directed to the possession and control test on my office's *IPC Guide to Exemptions* and asked to provide as much information as possible.
- [14] On November 21, 2017, the RM provided a response to the draft report to my office. It also applied a new discretionary exemption to the records, section 20 of LA FOIP. In a review, my office will generally not consider a new discretionary exemption after my office has completed a draft report. The RM also noted that some records originally

identified as responsive to the second item of the Applicant's request were non-responsive because they were created after the event of April 6, 2017 and the request was for records that led to that event.

II RECORDS AT ISSUE

[15] The RM has withheld 115 pages of records in their entirety. The RM originally applied subsections 14(1)(a), (c), (d), (f), (k), and 28(1) of LA FOIP. In the course of the review, it also applied subsections 13(1)(b), 13(2), 14(1)(a.1), (e), (g), (i) and 18(1)(b) of LA FOIP. Although the RM raised subsection 15(1)(b)(i) of LA FOIP in a submission, it did not indicate where it applied to the record.

[16] See Appendix A for the full listing of records.

[17] As mentioned, the paginated record provided by the RM included documents that were not records at issue in this review such as responsive records that have already been released to the Applicant and correspondence regarding the current file. Further, the paginated record included records created after the Applicant made the access to information request to the RM. The access request crystallizes on the day the access to information request is received by the RM and records created after that day are not responsive. This explains the gaps in the pagination.

[18] Appendix A also lists which records were made available to the Applicant before he made the access to information request.

III DISCUSSION OF THE ISSUES

1. Did the RM conduct a reasonable search for records?

[19] Section 5 of LA FOIP provides:

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.

[20] Section 5 is clear that access can be granted provided the records are in the possession or under the control of the local authority. LA FOIP does not require a local authority to prove with absolute certainty that records do not exist. It must however, demonstrate that it has made a reasonable effort to identify and locate responsive records.

[21] A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request. The threshold that must be met is one of “reasonableness”. In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable.

[22] The level of detail that can be provided to my office is outlined in my office’s resource, *IPC Guide to Exemptions*. Each case requires different search strategies and details depending on the nature of the records and the way an organization manages them.

[23] The Applicant was not satisfied with the RM’s response that the human resources committee of the RM’s council did not keep minutes. He is concerned that the RM’s original response of July 25, 2017 indicated that he would not be given copies of the minutes and later in 2017 the RM indicated they did not exist.

[24] He pointed to several resources that indicate that committees of council must keep minutes of their meetings.

[25] *The Council Member’s Handbook* by the Ministry of Government Relations (November 2016) states:

Usually a group established by council are required to exercise their duties and powers at a duly convened meeting that is open to the public. Groups established by council also require written meeting procedures. Generally, these groups make recommendations to council, who acts on the recommendations and makes the final decision.

[26] *The Municipal Council Meeting Guide* by the Ministry of Government Relations (October 2013) states:

Council committees are required to exercise their duties and powers in the same manner as council – at a duly convened meeting. This includes recording minutes approved by the committee and signed by the presiding officer and the administrator.

[27] I also note that subsection 115(2) of *The Municipalities Act* requires that minutes should be taken at council committee meeting. Subsection 115(2) is as follows:

115(2) If a council has delegated a power, duty or function to a council committee, the minutes of a council committee meeting that deal with the power, duty or function must be signed by:

- (a) the person presiding at the meeting at which the minutes are approved; and
- (b) the administrator or the administrator's designate whichever was present at the meeting at which the minutes are approved.

[28] The RM did not describe its search for minutes of the human resources committee of council. However, it did provide a signed letter by four members of the human resources committee which indicates that the committee's purpose is to meet with the RM employees to perform annual reviews, wage negotiations, and deal with any grievances or concerns. It indicated that the committee has not kept minutes or other written records as the meetings would contain personal information about the employees.

[29] The RM also identified written notes kept by the Reeve of the RM who attended human resources committee meetings as responsive records.

[30] Given the signed letter of the council members who sit on the human resources committee and the identification of notes from the meetings, I am satisfied that no minutes exist.

[31] It would be best practice for the RM to keep committee minutes and minimize the amount of or de-identify the personal information in the minutes. It should also focus on whether collection and uses are authorized by LA FOIP and protecting records containing personal information from unauthorized uses and disclosures.

2. Are there additional records responsive to the Applicant's access request and are all records identified responsive to the Applicant's request?

[32] When a public body 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. The request itself sets out the boundaries of relevancy and circumscribes the records or information that will ultimately be identified as being responsive.

Additional responsive records

[33] The first item in the Applicant's request for review was for correspondence with my office, in particular correspondence dealing with file 097-2017. As part of this review, my office reread my public Review Report 097-2017. There was one responsive record discussed in that report. This record was provided to my office for the purpose of file 097-2017. This would have been sent as an attachment to correspondence to my office. However, the record for file 097-2017 was not identified as a record for the purpose of this current review.

[34] The RM indicated that it did not believe the record for 097-2017 would be a record responsive to the Applicant's request in this file because I found in Review Report 097-2017 that it should not be disclosed pursuant to subsection 28(1) of LA FOIP.

[35] The RM has identified other attachments to correspondence that was sent to my office as responsive records. Therefore, I find the record discussed in Review Report 097-2017 to be a responsive record.

[36] I recommend the RM consider whether subsection 28(1) of LA FOIP still applies to the record for Review Report 097-2017 and, if not, provide a copy to the Applicant.

Are all records identified responsive to the request?

[37] The second item in the Applicant's access request was for records "that led" to an event that occurred on April 6, 2017. The RM originally identified some records that were created after April 6, 2017.

- [38] However, after my office provided the RM with a copy of the draft report, it indicated that several records that were identified as responsive to the second item of the Applicant's request were not responsive to the Applicant's request as these records were provided to a third party after the events of April 6, 2017
- [39] I am not persuaded that the action of providing records to a third party would make records non-responsive. The key is whether the records led to the events of April 6, 2017. The RM did not provide an explanation regarding whether certain records did or did not lead to that event.
- [40] However, I have reviewed the record and note that some records were created after April 6, 2017. Therefore, those records are non-responsive because they could not possibly have led to an event that occurred before they were created. I note that the RM did not provide all of the dates or descriptions of the records, even though my office asked it to do so when the Index of Records was created.
- [41] I find that pages 130-135, 138, 141-142, 149-152, 153-161, 165 and 168 are non-responsive.
- [42] I recommend that the RM pay extra attention when identifying which records are responsive when it receives an access request.

3. Are the records in the possession or control of the RM?

- [43] Section 5 of LA FOIP indicates that an Applicant should be permitted access to records that are in the possession or under the control of a local authority, subject to exemptions found in the Act.
- [44] The RM indicated late in this review that it does not have control over the records that make up pages 128-170. It indicated by telephone that these records were originally identified as responsive records because they wanted to be transparent. However, it is now indicating that the RM does not have control of these records.

[45] The RM submitted that these records were collected by an employee of the RM to make a harassment complaint. The RM indicated that the employee kept them in the RM office because the employee did not have a secure place to keep them at home.

[46] In the past, my office has found that possession is physical possession plus a measure of control of the record. Control connotes authority. A record is under the control of a public body when the public body has the authority to manage the record including restricting, regulating and administering its use, disclosure or disposition.

[47] Possession and control are different things. It is conceivable that a public body might have possession but not control of a record or that it might have control but not possession.

[48] It is clear in this case that the RM has possession of the record, but I must determine that it has control.

[49] To determine whether a public body has a measure of control over a record(s), both parts of the following test must be met:

1. Do the contents of the document relate to a departmental matter? and
2. Can the public body reasonably expect to obtain a copy of the document upon request?

[50] If both questions are answered in the affirmative, the document is under the control of the public body. In answering these questions, the following factors may be considered:

- The record was created by a staff member, an officer, or a member of the public body in the course of his or her duties performed for the public body;
- The record was created by an outside consultant for the public body;
- The public body possesses the record, either because it has been voluntarily provided by the creator or pursuant to a mandatory, statutory or employment requirement;
- An employee of the public body possesses the record for the purposes of his or her duties performed for the public body;
- The record is specified in a contract as being under the control of a public body and there is no understanding or agreement that the records are not to be disclosed;

- The content of the record relates to the public body's mandate and core, central or basic functions;
- The public body has a right of possession of the record;
- The public body has the authority to regulate the record's use and disposition;
- The public body paid for the creation of the records;
- The public body has relied upon the record to a substantial extent;
- The record is closely integrated with other records held by the public body;
- A contract permits the public body to inspect, review and/or possess copies of the records the contractor produced, received or acquired;
- The public body's customary practice in relation to possession or control of records of this nature in similar circumstances;
- The customary practice of other bodies in a similar trade, calling or profession in relation to possession or control of records of this nature in similar circumstances; and
- The owner of the records.

[51] On November 16, 2017, my office advised the RM to provide as much detail as possible when addressing possession and control. The RM's response to the draft report dated November 21, 2017 only addressed the question of whether the RM could reasonably expect to obtain a copy of the document upon request. The RM's response stated that the records were kept on a locked desk drawer of the staff member in question and "Not one member of the RM staff, other than [the staff member in question], nor Council has any expectation to obtain these documents". It did not elaborate on this claim. Therefore, I am not persuaded that this is the case.

[52] The RM did not address whether the contents of the document relate to a RM matter. I note that at one time the RM of Manitou Lake and the Village of Marsden shared joint administration services. The Applicant's request and the records are tied to the interpersonal history that led to the decision to terminate this arrangement on April 6, 2017. As such, the RM originally identified these records as being responsive to the Applicant's request.

[53] The records are about events that occurred and individuals' behaviors in the scope of the RM workplace. The records were created at a time when the Village and the RM shared administration. The RM did indicate that some of the responsive records originated with the Village and not with the RM. However, it did not provide me with information as to whether these records were used in its decision to terminate the arrangement with the

Village. If so, the RM should have kept copies of these records. Again, I note that the RM had originally identified these records as being responsive to the Applicant's request for the "complaint that led to the recommendation to terminate". This leads me to believe that this information was used to come to a decision.

[54] The RM has not provided additional information to address the considerations outlined above. The RM has not persuaded me that either of the two parts of the control test have been met. Therefore, I find the records in question are in the possession and control of the RM.

4. Does subsection 13(1)(b) of LA FOIP apply to the record?

[55] Subsection 13(1)(b) of LA FOIP provides:

13(1) A head shall refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from:

...

(b) the Government of Saskatchewan or a government institution;

[56] Section 13 is a mandatory exemption which means that the head of the local authority is obligated to enforce the exemption where it thinks it may apply. Section 13 allows local authorities to withhold information that it obtained in confidence from other governments which are listed in its subsections, in this case, the Government of Saskatchewan or government institutions.

[57] The RM has applied this exemption to 46 pages in their entirety. These records are responsive to the first item of the Applicant's request, correspondence with my office.

[58] Subsection 13(1)(b) is a mandatory exemption. There is a two part test for subsection 13(1)(b) of LA FOIP:

1. Was the information obtained from the Government of Saskatchewan or a government institution?

2. Was the information obtained implicitly or explicitly in confidence?

Was the information obtained from the Government of Saskatchewan or a government institution?

[59] As noted, the RM applied this exemption to correspondence between itself and my office. I note that my office is an independent office of the Legislative Assembly of Saskatchewan, and is therefore not a part of the Government of Saskatchewan. Further, my office does not fit in the definition of government institution as provided by subsection 2(d) of LA FOIP which provides:

2 In this Act:

...

(d) “government institution” means a government institution as defined in *The Freedom of Information and Protection of Privacy Act*;

[60] Subsection 2(1)(d) of *The Freedom of Information and Protection of Privacy Act* (FOIP) provides:

2(1) In this Act:

...

(d) “government institution” means, subject to subsection (2):

(i) the office of Executive Council or any department, secretariat or other similar agency of the executive government of Saskatchewan; or

(ii) any prescribed board, commission, Crown corporation or other body, or any prescribed portion of a board, commission, Crown corporation or other body, whose members or directors are appointed, in whole or in part:

(A) by the Lieutenant Governor in Council;

(B) by a member of the Executive Council; or

(C) in the case of:

(I) a board, commission or other body, by a Crown corporation; or

(II) a Crown corporation, by another Crown corporation;

[61] As I am unaware of what information in the record was obtained from the Government of Saskatchewan or a government institution, the first part of the test is not met. Subsection 13(1)(b) of LA FOIP does not apply to the record.

5. Did the RM properly apply subsection 28(1) of LA FOIP?

[62] 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.

[63] In order for subsection 28(1) of LA FOIP to apply, the information in the record must first qualify as “personal information” as defined by subsection 23(1) of LA FOIP; however, it is not an exhaustive list. Some relevant provisions include:

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;

(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;

[64] The RM has applied subsection 28(1) of LA FOIP to 12 pages of the record in their entirety. It indicated that these records qualify as personal information pursuant to subsections 23(1)(g) and (k) of LA FOIP. However, as subsection 28(1) of LA FOIP is a

mandatory exemption, the entire record has been reviewed to identify personal information.

Identity of the applicant

[65] The RM did not apply subsection 28(1) of LA FOIP to the first item in the Applicant's request - correspondence with my office related to Review Report 097-2017. I note that I view the identity of applicants who make access to information requests and requests for review as the personal information of that Applicant (Review Reports LA-2010-002, LA-2012-002.) However, in this case, the applicant for file 097-2017 provided my office with signed consent granting the RM permission to share any of his personal information related to 097-2017 to the Applicant of this file. A copy of the consent was provided to the RM on November 9, 2017.

Other Personal Information

[66] The records responsive to the other two items of the Applicant's request are related to matters dealt with by the RM's human resource committee. Much of the subject matter of the records deal with relationships among those associated with the RM.

[67] The RM has indicated that 11 pages of the record qualify as personal information pursuant to subsection 23(1)(g) of LA FOIP.

[68] In order for information to qualify as personal information pursuant to subsection 23(1)(g) the information must:

- be correspondence sent to a local authority by the individual or replies to the correspondence that would reveal the content of the original correspondence;
- be implicitly or explicitly of a private or confidential nature; and
- not contain the views or opinions of the individual with respect to another individual.

[69] Of the 11 documents that the RM has identified as personal information pursuant to subsection 23(1)(g) of LA FOIP, seven have been identified as meeting notes and one is

an unsolicited letter from the RM. Two of the remaining documents have opinions with respect to another individual. As such, these would not qualify under subsection 23(1)(g) of LA FOIP.

[70] The remaining record (page 199) is an employee describing an occurrence in the workplace. As such, I am not of the opinion that it is correspondence to the RM, but work product of the employee. Therefore, it does not qualify as personal information under subsection 23(1)(g) of LA FOIP.

[71] My office has reviewed all of the records and has identified personal information as described below.

[72] The most prevalent type of personal information found in the record are the views or opinions of another individual with respect to the individual pursuant to subsection 23(1)(h) of LA FOIP.

[73] In Review Reports F-2006-004 and LA-2013-003 it was stated:

An “opinion” is a belief or assessment based on grounds short of proof; a view held as probable. An “opinion” is subjective in nature, and may or may not be based on fact. An example of an “opinion” would be a belief that a person would be a suitable employee, whether or not the opinion is based on the person’s employment history.

[74] However, in Review Report LA-2013-001, my office has found that observations simply indicate relevant facts such as daily events and practices at the workplace would not qualify as personal information.

[75] The record is comprised of many “statements” of individuals which describe work related occurrences. It is mostly factual information about what the various authors witnessed. The observations are not personal in nature. However, there are some parts of these statements that express the authors’ opinion of another individual. As such, the record as a whole would not qualify as personal information; however, some portions would qualify as personal information pursuant to subsection 23(1)(h) of LA FOIP and should be severed pursuant to subsection 8 of LA FOIP.

[76] I note that accounts of a public council meeting where opinions or views about an individual were expressed would not qualify as personal information. The views were expressed in a public setting.

[77] There is also employment history within the record. Employment history is the type of information normally found in a personnel file, including complaints made against an individual. There are instances throughout the record that reference complaints made against either an employee or elected individuals. Further, there is a letter and council meeting notes that also discuss a complaint against an elected official. This information would qualify as employment history pursuant to subsection 23(1)(b) of LA FOIP.

[78] The Applicant is a councillor. I have commented in Review Report 075-2017 and 076-2017 that this means he is entitled to sit at each and every council meeting. As a councillor, he is entitled to participate in the discussion and to vote on decision items. In order to be a good councillor, the councillor needs access to records in the possession or control of the RM. I would have expected a councillor could ask for almost any record in the possession or control of the RM that relate to RM business except possibly those containing personal information of others. In our democratic system, those elected to public office need information. Best practice would suggest that a public body have a policy on what a councilor is entitled to.

[79] In support of this, section 92 of *The Municipalities Act* provides as follows:

92 Councillors have the following duties:

(a) to represent the public and to consider the well-being and interests of the municipality;

(b) to participate in developing and evaluating the policies, services and programs of the municipality;

(c) to participate in council meetings and council committee meetings and meetings of other bodies to which they are appointed by the council;

(d) to ensure that administrative practices and procedures are in place to implement the decisions of council;

(e) subject to the bylaws made pursuant to section 81.1, to keep in confidence matters discussed in private or to be discussed in private at a council or council committee meeting until discussed at a meeting held in public;

(f) to maintain the financial integrity of the municipality;

(g) to perform any other duty or function imposed on councillors by this or any other Act or by the council.

[80] While I expect that a councillor should have access to records in the possession or control of the RM so he or she can fulfill their duties as a councillor, I note that subsection 92(e) of *The Municipalities Act* requires that councillors keep matters confidential until the matter is discussed in a public meeting. Further, I note that the personal information in question is in records that are related issues dealt with by the human resources committee. The Applicant does not sit on the human resources committee. The RM also has a duty to protect personal information.

[81] I recommend that the RM determine whether the Applicant has a need to know the personal information in question, and the record for Review Report 097-2017, for the performance of his duties as a councillor so he can use the personal information in accordance with section 27 of LA FOIP which provides:

27 No local authority shall use personal information under its control without the consent, given in the prescribed manner, of the individual to whom the information relates, except:

(a) for the purpose for which the information was obtained or compiled, or for a use that is consistent with that purpose; or

(b) for a purpose for which the information may be disclosed to the local authority pursuant to subsection 28(2).

[82] If the Applicant has a need-to-know the personal information to fulfil the performance of his duties as a councillor, I recommend the RM provide the entire record to the Applicant. If not, I recommend that the RM sever the personal information in question and provide the remainder of the record to the Applicant. I have attempted to describe where my office has found personal information in Appendix B of this Report. However,

I will also provide a version of the record with markups back to the RM for greater clarity.

[83] I also recommend the RM develop a policy setting out what a councillor is entitled to request and receive in terms of records in the possession of the RM.

6. Is the RM able to rely on any other discretionary exemptions?

[84] The RM has also applied subsections 13(2), 14(1)(a), (a.1) (c), (d), (e), (f), (g), (i), (k) and 15(1)(b) of LA FOIP to the records. Discretionary exemptions are introduced with the wording “A head may refuse...” This indicates that the local authority has the option to withhold or release the information. These exemptions appeared to have been applied in a blanket fashion as discussed earlier in this Report. Further, the RM provided very little explanation as to how the exemptions apply to each page of the record.

[85] I note that section 51 of LA FOIP requires the local authority to provide sufficient information to persuade me that an exemption applies. It provides:

51 In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned.

[86] With respect to section 14 of LA FOIP, The RM has indicated that:

- correspondence between the RM and my office was part of a “lawful investigation”. It did not elaborate;
- some of the records have been provided to the Royal Canadian Mounted Police (RCMP) regarding an investigation. The RM provided my office with the name of an RCMP officer and asked that my office contact the officer to obtain the information we require;
- there was a harassment investigation pursuant to subsection 36(1)(f) of *The Occupational Health and Safety Regulations, 1996*. I note this provision only requires that the RM, as an employer, have a policy in place.

[87] As noted, on October 6, 2017, my office explained to the RM that each exemption has a certain criteria or tests. The tests and criteria for all exemptions were provided to the RM

at notification and on October 6, 2017. My office explained that the RM would have to address each criteria or test for each exemption and how it related to each record in order to demonstrate that an exemption applies. The RM did not take this advice and did not provide its reasons why the many exemptions applied. It also added more exemptions. It did not discuss the application of subsections 13(2) or 15(1)(b) of LA FOIP.

[88] Without knowing this information, I cannot draw conclusions with regards to the information and these additional provisions. My office needs sufficient information to make it clear what and why exemptions are applied in order for a review to be a reasonable exercise. Therefore, there is no need for me to reproduce the tests for these provisions or to go further with this review.

[89] Further, section 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.

[90] Once it has been established that exemptions apply, in order to comply with section 8 of LA FOIP, a line-by-line analysis of the record at issue is required to determine which exemptions apply to which portions of a record. The local authority is required to sever those portions that may qualify for a mandatory or discretionary exemption and release the balance of the record to the Applicant. Short of providing a severed version of the record, the RM could have provided a detailed Index of Records to the Applicant and or a description of the records withheld to achieve that purpose. The RM did not.

[91] Of the 115 pages withheld from the Applicant, no severing was applied. This suggests a “blanket” approach was taken to withholding each document which is not consistent with section 8 of LA FOIP.

[92] I find that the RM has not met its obligations under sections 8 or 51 of LA FOIP.

7. Does the RM have an obligation to provide the Applicant with copies of other records?

[93] In the course of this review, my office has noticed records that are being withheld from the Applicant that would appear that the Applicant would likely have access to because he is a councillor. My office asked the RM why it did not provide the Applicant with copies of these records after the access request was made.

[94] The RM indicated that the Applicant was provided access to these records before the access request was made. It also indicated that these records are available to the Applicant in a drop box to which all council members have access.

[95] Subsections 10(1) and (2) of LA FOIP provides:

10(1) Where an applicant is entitled to access pursuant to subsection 9(1), the head shall provide the applicant with access to the record in accordance with this section.

(2) A head may give access to a record:

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

(b) where it is not reasonable to reproduce the record, by giving the applicant an opportunity to examine the record.

[96] The RM must provide copies of the record to the Applicant if it is reasonable to do so. There are 17 pages of responsive records to which the Applicant currently should have access. The RM has not indicated why it would be unreasonable to provide the Applicant with these records.

[97] Regardless of the fact that the Applicant does have access to the records, he would not necessarily know which records in the drop box are responsive to his request.

[98] I recommend that the RM ask the Applicant if he prefers receiving copies of the responsive records or if he is comfortable with accessing them himself from the drop box. If he would like a copy, I recommend that the RM provide him with a copy of the

documents. If he would like to access them himself in the drop box, I recommend that the RM provide him with a list of responsive records that are in the drop box.

IV FINDINGS

[99] I find that the RM has provided a reasonable explanation as to why minutes of the human resources committee do not exist.

[100] I find that the record for Review Report 097-2017 would be a record responsive to the Applicant's access request.

[101] I find that pages 130-135, 138, 141-142, 149-152, 153-161, 165 and 168 are non-responsive and do not have to be released.

[102] I find the records in question are in the possession and control of the RM.

[103] I find that the RM has not met its obligations under sections 8 or 51 of LA FOIP.

[104] I find that the RM did not demonstrate that subsections 13(1)(b), 13(2), 14(1)(a), (a.1) (c), (d), (e), (f), (g), (i), (k) and 15(1)(b) of LA FOIP apply to the record.

[105] I find that portions of the record qualify as personal information.

[106] I find that the RM did not meet its obligation under subsection 10(2) of LA FOIP.

V RECOMMENDATIONS

[107] I recommend that the RM consider whether subsection 28(1) of LA FOIP still applies to the record for Review Report 097-2017 and, if not, provide a copy to the Applicant.

[108] I recommend that the RM receive training on best practices when responding to access to information requests and requests for review.

[109] I recommend that the RM pay special attention when identifying which records are responsive when it receives an access request.

[110] I also recommend the RM develop a policy setting out what information a councillor is entitled to request and receive in terms of records in the possession of the RM.

[111] I recommend the RM release the entire record to the Applicant with the exception of the portions of the record I have identified as personal information. I recommend that the RM determine whether the Applicant has a need to know the personal information for the performance of his duties as a councillor. If the Applicant has a need-to-know the personal information to fulfil the performance of his duties as a councillor, I recommend the RM provide the entire record to the Applicant. If not, I recommend that the RM sever the personal information in question and provide the remainder of the record to the Applicant.

[112] I recommend that the RM ask the Applicant if he prefers receiving copies of the responsive records that he already has access to or if he is comfortable with accessing them himself from the drop box. If he would like a copy, I recommend that the RM provide him with a copy of the documents. If he would like to access them himself in the drop box, I recommend that the RM provide him with a list of responsive records.

Dated at Regina, in the Province of Saskatchewan, this 24th day of November, 2017.

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

Appendix A

Page	Date and Time	Description	From/to	Exemptions Applied (LA FOIP)
64	April 28, 2017 2:51	E-mail	RM/IPC	13(1)(b), 13(2), 14(1)(c), (d)
65, 95	April 28, 2017	Letter	RM/ Applicant for 097-2017	13(1)(b), 13(2), 14(1)(c), (d)
66, 126	May 18, 2017 2:57	E-mail	IPC/RM	13(1)(b), 13(2), 14(1)(c), (d) (page missing)
67-68, 79	May 23, 2017*	E-mail	RM/IPC	13(1)(b), 13(2), 14(1)(c), (d)
69	May 24, 2017 8:30	E-mail	IPC/RM	13(1)(b), 13(2), 14(1)(c), (d)
70	May 23, 2017	Letter	RM/IPC	13(1)(b), 13(2), 14(1)(c), (d)
71-72	February 19, 2015	Council meeting minutes	-	13(1)(b), 13(2), 14(1)(c), (d)
73-75	December 3, 2015	Council meeting minutes	-	13(1)(b), 13(2), 14(1)(c), (d)
76-79, 122- 125	December 8, 2016	Council meeting minutes	-	13(1)(b), 13(2), 14(1)(c), (d)
81	June 5, 2017 4:08	E-mail	Applicant for 097-2017/ RM	13(1)(b), 13(2), 14(1)(c), (d)
82	June 6, 2017 8:46	E-mail	IPC/RM	13(1)(b), 13(2), 14(1)(c), (d)
	June 6, 2017 8:24	E-mail	RM/IPC	
83	May 24, 2017 7:47	E-mail	IPC/RM	13(1)(b), 13(2), 14(1)(c), (d)
85	May 24, 2017 9:30	E-mail	IPC/RM	13(1)(b), 13(2), 14(1)(c), (d)
86	May 25, 2017 8:41	E-mail	IPC/RM	13(1)(b), 13(2), 14(1)(c), (d)
	May 24, 2017 9:30	E-mail	RM/IPC	
93	March 14, 2017	Access request	-	13(1)(b), 13(2), 14(1)(c), (d)
94	March 17, 2017	Letter	RM/ Applicant for 097-2017	13(1)(b), 13(2), 14(1)(c), (d)
99- 101	Unknown	Government Procurement	-	13(1)(b), 13(2), 14(1)(c), (d)

Page	Date and Time	Description	From/to	Exemptions Applied (LA FOIP)
110-121	Unknown	RM Policy	-	13(1)(b), 13(2), 14(1)(c), (d)
127	April 19,2017	Letter	RM/ Applicant for 097-2017	13(1)(b), 13(2), 14(1)(c), (d)
128	November 28, 2016	Statement by Individual	-	14(1)(a), (a.1), (c), (d), (e), (f), (g), (i), (k)
129	April 4, 2017	Statement by Individual	-	14(1)(a), (a.1), (c), (d), (e), (f), (g), (i), (k)
130 – 132	May 1, 2017 to May 12, 2017	Statement by Individual	-	Non-responsive
133	May 12, 2017	Letter	Lawyers of RM Employee / Individual	Non-responsive
134- 135	May 12, 2017 1:58	E-mail	Lawyers of RM Employee/ RM Employee	Non-responsive
136	Unknown	Unknown	-	14(1)(a), (a.1), (c), (d), (e), (f), (g), (i), (k)
137	April 10	Facebook post	-	14(1)(a), (a.1), (c), (d), (e), (f), (g), (i), (k)
138	May 1, 2017	Unknown	-	Non-responsive
139	Unknown	Unknown	-	14(1)(a), (a.1), (c), (d), (e), (f), (g), (i), (k)
140	Unknown	Unknown	-	14(1)(a), (a.1), (c), (d), (e), (f), (g), (i), (k)
141, 142	May 12, 2017	Unknown	-	Non-responsive
143- 144, 145- 146	Unknown	Unknown	-	14(1)(a), (a.1), (c), (d), (e), (f), (g), (i), (k)

Page	Date and Time	Description	From/to	Exemptions Applied (LA FOIP)
147, 148	Unknown	Unknown	-	14(1)(a), (a.1), (c), (d), (e), (f), (g), (i), (k)
149-152	June 12, 2017	Council meeting minutes	-	Non-responsive
153-160	April 7, 2017	Screen shot of text messages	-	Non-responsive
161	July 12, 2017	E-mail letter of May 12	-	Non-responsive
162-164		Lagoon Project		14(1)(a), (a.1), (c), (d), (e), (f), (g), (i), (k)
165	May 4, 2017	Account of RM Council meeting	-	Non-responsive
168	May 4, 2017	Statement by Individual	-	Non-responsive
169-170	Unknown	Facebook	-	14(1)(a), (a.1), (c), (d), (e), (f), (g), (i), (k)
171	April 27, 2017	Letter	RM/Public	The RM indicated that records were provided to the Applicant prior to his access request.
172	April 11, 2017	Notice	RM/Public	The RM indicated that records were provided to the Applicant prior to his access request.
173	April 5, 2017	HR Committee Recommendation	-	The RM indicated that records were provided to the Applicant prior to his access request.
174	November 30, 2016	HR Committee meeting notes	-	13(2), 23(1)(g), (k), (k)(iii)
175	November 30, 2016	Individual statement	-	13(2), 23(1)(g), (k), (k)(iii)
176	August 6, 2016	HR Committee meeting notes	-	13(2), 23(1)(g), (k), (k)(iii)
177	December 6, 2016	Meeting notes	-	13(2), 23(1)(g), (k), (k)(iii)
178	March 8, 2017	HR Committee meeting notes	-	13(2), 23(1)(g), (k), (k)(iii)
179	March 8	HR Committee meeting notes	-	13(2), 23(1)(g), (k), (k)(iii)
180	March 6, 2017	HR Committee meeting notes	-	13(2), 23(1)(g), (k), (k)(iii)
181-182	Unknown	RM Policy	-	The RM indicated that records were provided to the Applicant prior to his access request.

Page	Date and Time	Description	From/to	Exemptions Applied (LA FOIP)
183-186	December 8, 2014	Joint Administration agreement	-	The RM indicated that records were provided to the Applicant prior to his access request.
188-193	April 6, 2017	Council Meeting Minutes	-	The RM indicated that records were provided to the Applicant prior to his access request.
194-195	May 15, 2017	Council Meeting Minutes	-	The RM indicated that records were provided to the Applicant prior to his access request.
196-197	April 5, 2017	Letter	Council/Elected Official	23(1)(g), (k), (k)(iii)
198	April 5, 2017	HR Committee meeting notes	-	23(1)(g), (k), (k)(iii)
199	March 22, 2017	Individual statement	-	23(1)(g), (k), (k)(iii)
200	Unknown	Unknown	-	23(1)(g), (k), (k)(iii)

Appendix B

Page	Date and Time	Description	From/to	Exemptions Applied (LA FOIP)
136	Unknown	Unknown	-	Sever 1 passage – personal information
138	May 1, 2017	Unknown	-	Sever 5 passages – personal information
139	Unknown	Unknown	-	Sever 1 passage – personal information
140	Unknown	Unknown	-	Sever 1 passage – personal information
143-144, 145-146	Unknown	Unknown	-	Page 143/145 – Sever 2 passages – personal information Page 144/146 – Sever entire page – personal information
147, 148	Unknown	Unknown	-	Sever 1 passage – personal information
162-164		Lagoon Project		Page 163 – Sever 4 passages – personal information Page 164 – Sever 4 passages – personal information
175	November 30, 2016	Individual statement	-	Sever 1 passage – personal information
180	March 6, 2017	HR Committee meeting notes	-	Sever 1 passage – personal information
196-197	April 5, 2017	Letter	Council/Elected Official	Withhold entire record – personal information
198	April 5, 2017	HR Committee meeting notes	-	Withhold entire record – personal information
200	Unknown	Unknown	-	Sever 3 passages – personal information