



REVIEW REPORT 157-2019

Saskatoon Police Service

January 20, 2020

Summary:

The Saskatoon Police Service (SPS) received an access for information request and denied access to the Applicant pursuant to subsection 14(1)(k) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Although the Commissioner found the SPS has the authority to withhold the record pursuant to subsection 14(1)(k) of LA FOIP, the Commissioner recommended that SPS use its exercise of discretion and, with severing as much information as reasonably practicable, consider releasing the record in full or portions to the Applicant. The Commissioner also found that the SPS did not respond to the Applicant within the legislated timeframe.

I BACKGROUND

[1] On February 11, 2019, the Saskatoon Police Service (SPS) received the following request:

We would like a copy of or access to a document given to Prosecutor's office on or about February 4, 2016 by Cst. Jing Xiao file [XXXX]. We would also like a copy of or access to the report the prosecutor gave to Cst. Xiao on or about March 8, 2016.

[2] On April 12, 2019, the SPS responded to the Applicant that it was withholding the record for the second request pursuant to subsection 14(1)(k) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] On April 23, 2019, my office received a request for review from the Applicant. On May 23, 2019, my office determined it would proceed with a review, and provided notification

to the Applicant and SPS of the review on May 28, 2019. On June 27, 2019, the SPS provided my office with its submission.

II RECORDS AT ISSUE

[4] The record at issue is a one-page memorandum from the Crown Prosecutor to Constable Xiao. I note that the SPS has released to the Applicant, in full, the first part of the access request, which is the copy of the document given to the Crown Prosecutor by Constable Xiao; I do not need to consider this part of the Applicant's request.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[5] The SPS is a local authority pursuant to subsection 2(f)(viii.1) of LA FOIP; thus, I have jurisdiction to conduct this review.

2. Did the SPS respond within the legislated timeframe?

[6] Subsection 7(2) of FOIP requires a local authority to respond to an Applicant within 30 days. Subsection 7(2) provides:

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

[7] In its submission, the SPS fully acknowledged that it was not able to meet the 30-day response time. As the SPS does not dispute this, I do not need to undertake an analysis; therefore, I find that the SPS did not respond within the legislated timeframe.

3. Did the SPS properly apply subsection 14(1)(k) of LA FOIP to the record?

[8] Subsection 14(1)(k) of LA FOIP provides:

14(1) A head my refuse to give access to a record, the release of which could:

...

(k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter.

[9] When considering whether or not subsection 14(1)(k) of LA FOIP applies to a record, my office recommends the following test, from my office's resource *Guide to FOIP: The Freedom of Information and Protection of Privacy Act* (December, 2019) (Guide to FOIP) be met:

1. Is there a "law enforcement matter" involved; and
2. Does one of the following exist?
 - a. Could release of information interfere with a law enforcement matter?
 - b. Could release disclose information with respect to a law enforcement matter?

[10] I will consider each part of the test.

1. Is there a "law enforcement matter" involved?

[11] My office has indicated that law enforcement includes:

1. policing, including criminal intelligence operations; or
2. investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment.

[12] The matter before me concerns communication between the Crown Prosecutor and Constable Xiao (SPS). The Crown Prosecutor was providing an opinion on charges of criminal harassment to Constable Xiao. A charge of criminal harassment is contemplated pursuant to section 264 of the federal *Criminal Code*; therefore, a "law enforcement matter" is involved.

[13] I will now consider the second part of the test.

2. Does one of the following exist?

- a. Could release of information interfere with a law enforcement matter?*
- b. Could release disclose information with respect to a law enforcement matter?*

[14] To meet this part of the test, it is only necessary for the local authority to demonstrate that the information in the record is information with respect to a law enforcement matter.

[15] Upon review of the record, it appears to relate to the question of criminal harassment charges as they relate to the law enforcement matter. As such, I am persuaded that release of the record would disclose information in relation to the law enforcement matter. The second part of the test has been met, and I find that subsection 14(1)(k) of LA FOIP applies to the record and that SPS may continue to withhold it from the Applicant.

[16] I wish to add that in withholding a document such as this, the SPS should take into consideration its exercise of discretion and potentially reconsider releasing if the information is not sensitive in nature. My office's resource, Guide to FOIP, encourages public bodies to not take a blanket approach when applying an exemption and exercise its discretion wherever appropriate. That is, although it may be appropriate to withhold information in one matter pursuant to a discretionary exemption such as this, it does not mean it is appropriate in all cases. I recommend that SPS consider whether the contents of the document in question would, with possibly severing as much information as reasonably practicable, satisfy the Applicant's request and consider releasing it in full or portions to the Applicant.

IV FINDINGS

[17] I find that SPS did not respond within the legislated timeframe.

[18] I find that subsection 14(1)(k) of LA FOIP applies to the record.

V RECOMMENDATION

[19] Although the SPS may continue to withhold the record pursuant to subsection 14(1)(k) of LA FOIP, I recommend that SPS consider whether the contents of the document in question would, with possibly severing as much information as reasonably practicable, satisfy the Applicant's request and consider releasing it in full or portions to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 20th of January, 2020.

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