



REVIEW REPORT 175-2019

City of Regina

June 18, 2020

Summary:

The City of Regina (the City) received an access to information request regarding a certain parcel of land from the Applicant. In its section 7 response to the Applicant, the City withheld portions of the records pursuant to subsection 13(1)(b) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found that the City properly applied subsection 13(1)(b) of LA FOIP to some parts of the records, but not to others. The Commissioner recommended the City release the records to which he did not find subsection 13(1)(b) of LA FOIP applied. The Commissioner further found that the City met its obligation pursuant to section 8 of LA FOIP.

I BACKGROUND

[1] On March 26, 2019, the City of Regina (the City) received the following request from the Applicant:

RE: [parcel of land]

Any and all of the following: agreements, correspondence received and/or sent internally or externally, applications, plans, drawings presentations made and any permits issued, changes and/or amendments to zoning bylaws and/or applied for, property tax information submitted, assessed and/or appeals for the period JAN 1/2015 to MAR 26/2019 involving the owner of the property [XXXXXX] or their representatives or any other 3rd party including Provincial or Federal Governmental bodies [sic]

[2] In a letter dated May 9, 2019, the City responded to the access request providing the Applicant with copies of redacted records. The City stated it redacted records pursuant to

subsection 13(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The City later clarified that it was withholding parts of the record pursuant to subsection 13(1)(b) of LA FOIP.

[3] On June 6, 2019, the Applicant requested a review by my office. My office provided notification to the City and to the Applicant on June 11, 2019, of my office's intent to undertake a review.

II RECORDS AT ISSUE

[4] The City provided the Applicant with a total of 33 pages of responsive records, with redactions, to which it applied subsection 13(1)(b) of LA FOIP.

[5] Additionally, the City withheld in full from the Applicant 105 pages that form reports 1, 2 and 3 pursuant to subsection 13(1)(b) of LA FOIP; I will refer to these as reports 1, 2 and 3 throughout my analysis.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to undertake a review?

[6] The City qualifies as a local authority pursuant to subsection 2(f)(i) of LA FOIP.

[7] Saskatchewan Telecommunications (SaskTel) is the other party identified in the records. I note that SaskTel is a government institution pursuant to subsection 2(d) of LA FOIP, subsection 2(1)(d)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and to section 3 and PART I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations).

[8] I therefore have jurisdiction to conduct this review.

2. Did the City properly apply subsection 13(1)(b) of LA FOIP to the records?

[9] 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;

[10] Section 13 of LA FOIP is a mandatory exemption. Subsection 13(1)(b) of LA FOIP obligates a local authority to withhold information it obtained in confidence, either implicitly or explicitly, from the Government of Saskatchewan or government institutions if the exemption is found to apply.

[11] To determine if subsection 13(1)(b) of LA FOIP applies, my office recommends that local authorities apply the following three-part test, which can be found in my office's *Guide to FOIP, Chapter 4* (updated February 4, 2020) at pages 22 to 25:

1. Was the information obtained from the Government of Saskatchewan or its agencies, Crown corporations or other institutions?
2. Was the information obtained implicitly or explicitly in confidence?
3. Is there consent to disclose the information or has the information been made public?

1. Was the information obtained from the Government of Saskatchewan or its agencies, Crown corporations or other institutions?

[12] "Obtained" means to acquire in any way; to get possession of; to procure; or to get a hold of by effort. A local authority may obtain information either directly or indirectly from a government institution, but to obtain it implies that the local authority did not create the information.

[13] Subsection 13(1)(b) of LA FOIP includes the phrase "information contained in a record", so the exemption can apply to information that is in a record provided it was authored by a government institution, in this case, by SaskTel.

[14] With respect to the emails, I note that the exchanges between SaskTel and the City were initiated by SaskTel, which then lead to ongoing communication exchanges between both parties. I note that some emails are repeated throughout the records. The question is whether the emails at issue contain any information from SaskTel. The exemption should apply if the records at issue contain information offered by SaskTel, or if the record itself was prepared and submitted by SaskTel to the City. Upon review of the email exchanges in the records in question, I note the following:

- August 10 & 11, 2016 emails – these emails appear to contain information supplied by SaskTel to the City and, therefore, meets the first part of the test. I will consider them under the second part of the test.
- August 19, 2016 emails – these emails appear to contain information supplied by SaskTel to the City and, therefore, meet the first part of the test. I will consider them under the second part of the test.
- September 9, 2016 email – this email references report 3, which was supplied to the City by SaskTel and, therefore, meets the first part of the test. I will consider it under the second part of the test.
- December 16 and 19, 2016 emails – these emails appear to contain discussion that includes information supplied by SaskTel to the City and, therefore, meets the first part of the test. I will consider them under the second part of the test.

[15] I note that, upon review of the records, reports 1 and 2 are copies of City bylaws. These do not appear to contain information supplied by SaskTel to the City, and therefore, do not meet the first part of the test. I do not need to consider them under the second part of the test and find that subsection 13(1)(b) of LA FOIP does not apply to reports 1 and 2; I recommend the City release these reports.

[16] Upon review of report 3, it does appear to have been prepared for SaskTel's use based on information that SaskTel supplied to the preparer. I am satisfied that when report 3 was obtained by the City it contained information that belonged to SaskTel, so the first part of the test is met.

[17] I will now consider the second and third parts of the test with respect to the email exchanges and to report 3.

2. *Was the information obtained implicitly or explicitly in confidence?*
3. *Is there consent to disclose the information or has the information been made public?*

[18] To obtain a record in confidence usually describes a situation of mutual trust and that the provider of the information has stipulated how the information can be disseminated. For confidence to be found, there must be an implicit or explicit agreement or understanding of confidentiality on both the part of the local authority and the party that provided the information. The definitions of each are as follows:

- *Implicitly* means that confidentiality is understood even through there is no actual agreement or other physical evidence of the understanding that information will be kept confidential. Factors to consider include the nature of the information, if a reasonable person would consider the information confidential, if the local authority or party that provided the information would normally keep it confidential, if the local authority has internal policies or procedures that speak to how records are to be managed or if the information is available from sources to which the public has access.
- *Explicitly* means the request for confidentiality has been clearly expressed, distinctly stated or made definite. There may be a documented understanding or express condition of confidentiality between the local authority and the other party that the information is to be kept confidential. The local authority may have also expressed its intentions to keep the information confidential prior to receiving it.

[19] In its submission, the City stated, “the information was obtained explicitly in confidence from SaskTel as shown at the email in Records File... bottom of page 2, email from [XXXXXX]... and the top of page 3 where it states the email message was confidential and only for the intended recipient”. The City added that, “this was also reiterated through verbal communication between the City and SaskTel”.

[20] The City also provided an affidavit signed by the Senior City Planner, who stated that, “[a]ll discussions are confidential between the parties involved ...[i]n this case where there is no requirement for public participation ...[d]etails of the proposal ... are not available to third parties without the owner’s consent. ... This process is applied consistently for all

consultations with clients prior to applications being processed...”. It added that “[t]his affidavit is presented for the purpose of reinforcing the City’s position that the information received from the City, from SaskTel, was obtained in confidence and handled in a confidential manner as implied by both parties.”

[21] The City also included a letter from SaskTel to the City in which SaskTel stated it supplied the information in the records to the City in confidence. SaskTel added it did not provide consent to disclose the documents in question and did not intend to make the information public in the future.

[22] In past reports, my office has stated that confidentiality statements on emails or other documents do not normally, on their own, mean the information contained within a record is confidential information. It is, rather, one of many considerations my office takes into account. I am satisfied, however, that the information from SaskTel was obtained implicitly in confidence for the other above noted reasons. I find, therefore, that subsection 13(1)(b) of LA FOIP has been properly applied to all emails as well as to report 3. I recommend the City continue to withhold all emails and report 3.

3. Did the City meet its obligations pursuant to section 8 of LA FOIP?

[23] Section 8 of LA FOIP provides as follows:

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.

[24] A local authority, when it receives an access request, must complete a line-by-line analysis of the responsive records to comply with section 8 of LA FOIP. Through its analysis, a local authority must determine where mandatory and discretionary exemptions apply, and sever those specific portions of the record accordingly. Then, it is to release the remainder to the Applicant.

[25] In its submission, the City stated the following:

The City follows the following process when applying redactions:

- When processing records in response to an access the information request, a line by line review is conducted on records responsive to the request, with redactions applied in accordance with LA FOIP.
- Applicable section(s) of the Act are referenced for each redaction.
- Redactions are limited to the portion of the record to which access is refused.
- Where redactions are applied, to refuse access to certain portions of a record, access is provided to the remainder of the record.
- When redactions are applied, the City endeavors to ensure that the unredacted information fulfills the purpose of the Act and provides context for the Applicant. [sic]

[26] Upon review of the record, it appears to me that the City provided appropriate severance and considered where it could release information. For example, I note that the City, while it severed the information in the body of the emails, did leave header information such as dates and recipient information. This type of severance normally complies with section 8 of LA FOIP; I find, therefore, that the City met its obligation pursuant to section 8 of LA FOIP.

IV FINDINGS

[27] I find that subsection 13(1)(b) of LA FOIP was properly applied to all email exchanges and to report 3, but that subsection 13(1)(b) of LA FOIP was not properly applied to reports 1 and 2.

[28] I find that the City met its obligation pursuant to section 8 of LA FOIP.

V RECOMMENDATION

[29] I recommend the City continue to withhold all emails and report 3, but that it release reports 1 and 2.

Dated at Regina, in the Province of Saskatchewan, this 18th day of June, 2020.

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