

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF ██████████ IN RELATION TO INFORMATION
REQUESTED FROM THE TOWN OF REGINA BEACH**

[1] ██████████ (the “Applicant”) forwarded an Access to Information Request form to the Town of Regina Beach (the “Respondent”), in which he requested the following:

“Name of Record (*if known*) Governance Study

Detailed Description of Record: The complete Governance Study as provided to the Town of Regina Beach.”

[2] By a letter dated August 19, 2003, the Respondent replied as follows:

“This letter is in response to your written request for access to “the complete governance study as provided to the Town of Regina Beach” which you delivered to the Town Office on July 22, 2003 (copy enclosed).

The governance study to which you refer is a consultative report, which was undertaken in a confidential manner and presented, considered and discussed at an in camera meeting. As you may be aware, Town Council had resolved in a subsequent meeting that only certain portions of the study would be made available to the public. You have previously received from the Town Office a copy of those portions.

The Town declines your requested access to the balance of the governance study for the following reasons (references are to sections and subsections of *The Local Authority Freedom of Information and Protection of Privacy Act*):

1. It could reasonably be expected to disclose advice, proposals, recommendations, analysis or policy options developed by or for the Town (subsection 16(1)(a));
2. It could reasonably be expected to disclose consultations or deliberations involving officers or employees of the Town (subsection 16(1)(b));
3. It discloses agendas or the substance of deliberations of a meeting held in the absence of the public (subsection 15(1)(b)(i));

4. It contains personal information, to which the consent to disclosure by the Town or the individual(s) to whom the information relates has not been granted (section 28(1));

5. It contains personal information, your access to which would not be a use consistent with the purpose for which the information was obtained or compiled (section 27(a));

and/or:

6. It disclosed agendas or the substance of deliberations of meeting(s) where the matters discussed are of such a nature that access could be refused pursuant to Part III (specifically, subsections 16(1)(a), 16(1)(b), 15(1)(b)(i) or Part IV (specifically, sections 28(1) and 27(a)).

Pursuant to the provisions of *The Local Authority Freedom of Information and Protection of Privacy Act*, you may request a review by the commissioner within one year of this notice.”

[3] The Applicant then submitted a Request for Review to my office on August 25, 2003. I then advised the Respondent by letter, dated August 26, 2003, as follows:

“We have received a Request for Review from the above named applicant and enclose herewith the yellow copy of same.

I hereby advise you of my intention to conduct a review in this matter and I would accordingly request that you forward to me the consultative report, which is the subject matter of the application for disclosure. When responding, would you be good enough to indicate which portions of the report have been released to the public and which portions are being withheld together with you [sic] reasons for refusing access to the undisclosed portions of the report.

I make this request pursuant to the provisions of The Local Authority Freedom of Information and Protection of Privacy Act.

I shall await your response.”

[4] By letter dated September 8, 2003, the Mayor of the Respondent replied as follows:

“I acknowledge receipt of your letter of August 26, 2003 and now enclose the consultative report, in its entirety, as per your request.

I would point out by way of background, that the engagement of the consultant, Small Solutions Business Advisory Ltd. was undertaken as part of an internal review by Council of its management personnel and structure, from the offices of Mayor and Councillors through to the supervisory and support staff employee by the Town.

You will see that part 2 of the report identifies each of the Councillors and employees and sets out the consultant’s task of determining “whether the current Mayor, Town Council Members, Administrative Staff and Maintenance Staff positions are meeting the roles, duties and responsibilities required”. Part 3 of the report outlines, in the consultant’s view how the roles responsibilities and job requirements of each position ought to be “reconstructed to maximize complete efficiency for each position”. Part 4 of then [sic] measures the performance of each of the positions and personnel involved against these standards and part 5 makes various recommendations for the consideration of Council. Part 1 sets forth an executive summary of the consultant’s conclusions and recommendations.

The information for the study was gathered through a series of interviews of Councillors, management and staff carried out in a private, confidential manner by the consultant. The report was ultimately tabled and discussed at an in camera meeting. Ultimately, it was resolved to adopt recommendations numbered 2 through 7 appearing on pages 25, 26 and 27 of the report, as well as those included under the heading “Final Recommendations” on page 27 and, though Council did not consider itself required to do so, to make available to the public those specific portions of the report upon request. It was determined that the balance of the report together with details as to the discussions at the in camera proceedings would remain privileged and confidential.

In my letter responding to [REDACTED] request (copy enclosed) I had cited a number of the provisions of *The Local Authority Freedom of Information and Protection of Privacy Act* in support of the decision to decline access to the balance of the report.

Firstly, reference was made to subsection 16(1)(a). Undoubtedly, the consultative report consists of “advice” (parts 1, 3, 4, 5, 6), “proposals”

(parts 1, 3, 5, 6), “recommendations” (parts 1, 3, 5, 6), “analysis” (parts 1, 2, 3, 4, 5, 6, tables and appendices) and “policy options” (parts 1, 3, 4, 5, 6) developed for the Town.

Secondly, reference has been made to subsection 16(1)(b). Clearly, access to the report could reasonably be expected to disclose “consultations or deliberations involving officers or employees” of the Town. Indeed, such consultations and deliberations are at the very heart of the report itself.

Thirdly, mention was made of subsection 15(1)(b)(i) of the legislation. As previously indicated, the report was received at and made the subject of an in camera meeting. Apart from those portions that Council subsequently decided to be made available to the public, the balance of the report and the discussions at the in camera meeting have remained privileged and confidential.

Fourthly, I have referred to subsection 28(1) found in the protection of privacy provisions of the Act. It is noted that subsection 23(1)(h) has included in the definition of personal information “the views or opinions of another individual with respect to the individual”. As the consultant has identified specific persons in part 2 of the report and expressed opinions about them in parts 1, 4 and 5, the Town would be prohibited by section 28 from disclosing the same without the consent of each individual.

Fifthly, I have eluded to subsection 27(a) of the Act from the standpoint that providing [REDACTED] with access to such personal information would not be a use consistent with the purpose it was obtained or compiled, that being an internal review undertaken by Council.

The sixth reason I have enumerated arises from a review of subsection 15(1)(b)(ii) of the Act. Access to the report would most certainly disclose “agendas or the substance of deliberations” of the meeting(s) in wherein Council conducted its internal review of its management personnel and structure and debated and formulated its policy. It is submitted that for the reasons previously outlined as concerns the report itself, such discussions ought not be disclosed pursuant to Part III (specifically subsections 16(1)(a), 16(1)(b) and 15(1)(b)(i)) or Part IV (specifically subsections 28(1) and 27(a)).

I hope that the foregoing shall be of assistance to you in your review of this matter. Should you require anything further, you may contact me directly.”

[5] I have reviewed the Consultant's Report and found that it consists of six parts with a Table and two Appendices. Parts 1, 4 and 5 contain recommendations and conclusions. As indicated by the Respondent, it has disclosed most of the recommendations contained in Part 5. The remaining portions of the Report deal with factual issues and questions asked by the Consultant.

[6] The Respondent has claimed several sections of *The Local Authority Freedom of Information and Protection of Privacy Act* as providing a basis for withholding the remainder of the Consultant's Report. Before addressing those sections cited by the Respondent, I feel it is more appropriate to first examine section 326 of *The Urban Municipality Act, 1984* which states:

“326. Any person is entitled at any time during regular business hours to inspect:

- (a) any contract approved by the council, any bylaw or resolution and any account paid by the council relating to the urban municipality;
- (b) the registers maintained by the clerk in accordance with subsection 32(5) and 36(4) and the Securities Register;
- (c) any report of any consultant engaged by the urban municipality, or of any committee or of any municipal employee or employee of any board, association, commission or other organization established pursuant to this Act by a council, after it has been submitted to the council, except any opinion or report of a solicitor or legal counsel;
- (d) the minutes of the council after they have been approved by the council;
- (e) any other reports and records authorized to be inspected by the council;

and the clerk shall, within a reasonable time after the demand, furnish him with copies of the whole or any part of any such documents at any rate that the council may fix as long as the rate does not exceed the reasonable costs incurred by the urban municipality in furnishing the copies.”

It is significant that under section 326(c), an urban municipality, such as the Respondent, must release all consultants' reports with the only exceptions being the opinion or report of legal counsel. There are no exceptions for reports presented at an in camera meeting of council or for reports created through an internal review. The Legislature has clearly indicated that all consultants' reports commissioned by an urban municipality are to be disclosed to the public.

[7] The relation between access provisions in other Acts and my powers under *The Local Authority Freedom of Information and Protection of Privacy Act* is governed by section 4 of that Act which states:

“4. This Act:

- (a) complements and does not replace existing procedures for access to information or records in the possession or under the control of a local authority;
- (b) does not in any way limit access to the type of information or records that is normally available to the public;
- (c) does not limit the information otherwise available by law to a party to litigation;
- (d) does not affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents;
- (e) does not prevent access to a registry operated by a local authority where access to the registry is normally allowed to the public.”

The exemptions under the Act should therefore not obstruct access to documents that are normally available from the local authority including consultants' reports pursuant to section 326(c) of *The Urban Municipality Act, 1984*. The exemptions claimed by the Respondent therefore do not have any relevance and the report should be disclosed.

[8] I do however wish to comment on the exemptions that the Respondent has claimed. On reading the entire Consultant's Report, I found that the exemptions claimed only applied to very limited portions, namely the Conclusions and Recommendations in Parts 1, 4 and 5 as being analyses or proposals developed for the local authority under section 16(1)(a). None of the sections dealing with factual matters or job descriptions would have been exempt from disclosure. Furthermore, the Report does not outline any consultations or deliberations of local authority employees pursuant to section 16(1)(b). Nor does the Report describe an agendas or deliberations from in camera meetings as provided for in section 15(1)(b)(i).

[9] The Respondent has claimed the identification of members of Council and of Town employees in Part 2 is personal information that cannot be disclosed. But, under sections 23(1)(k) and 23(2)(a) of the Act, the names of individuals, by themselves and positions held by the individuals are not personal information.

[10] The Respondent also claimed that Parts 1, 4 and 5 contained personal information in the form of opinions of another individual with respect to the members of council and the Respondent's employees. The Consultant does give his opinion as to the performance of Council in limited portions of Part 1 and gives further opinions about Council and certain employees in limited portions of Part 4. But section 28(2) of The Local Authority Freedom of Information and Protection of Privacy Act provides that such personal information may be disclosed:

“(a) for the purpose for which the information was obtained or compiled by the local authority or for a use that is consistent with that purpose.”

Clearly, the opinions were compiled as part of the study of the local authority's organization and to implement improvements to that organization. For implementation purposes, the personal information should have been disclosed. Furthermore, the public interest in disclosure clearly

outweighs any invasion of privacy caused by the disclosure pursuant to section 28(2)(n)(i). Therefore, had section 326(c) of *The Urban Municipality Act, 1984* not applied, I would likely have recommended that almost all of the report be disclosed.

[11] For the reasons outlined above, it is my view that the Respondent was not justified in denying access to the Consultant's Report.

[12] Dated at Regina, in the Province of Saskatchewan, this 30th day of September, 2003.

RICHARD P. RENDEK, Q.C.
Acting Commissioner of Information
and Privacy for Saskatchewan