



REVIEW REPORT 202-2018

Saskatoon Police Service

January 28, 2019

Summary: On July 27, 2018, the Applicant submitted an application for access to records to the Saskatoon Police Service (SPS). The SPS refused the Applicant access to the responsive records pursuant to subsections 14(1)(c) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found that the SPS appropriately applied subsection 14(1)(c) of LA FOIP to all the records and therefore did not need to consider subsection 28(1) of LA FOIP. The Commissioner also found that although the responsive records contained the personal information of the Applicant, the Applicant is not entitled to their own personal information as subsection 14(1)(c) of LA FOIP applies.

I BACKGROUND

- [1] On July 27, 2018, the Applicant submitted an application to the Saskatoon Police Service (SPS) for access to the following information, “Copy of Statement made by one [*name redacted*] against myself 2013-107454.”
- [2] On August 17, 2018, the SPS responded to the Applicant informing them that access to the information request was denied pursuant to subsection 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [3] On September 19, 2018, my office received an application for review from the Applicant which requested a review of the SPS’ decision to deny them access to the requested information.

[4] My office provided notice of its intention to review to both the SPS and the Applicant on September 27, 2018. Following my office's notice to the SPS, on October 2, 2018, the SPS provided an additional response to the Applicant stating that access to the requested information of July 27, 2018 was also being denied in accordance with subsection 14(1)(c) of LA FOIP. A copy of this letter to the Applicant was provided to my office.

[5] On October 12, 2018, the SPS provided my office with its submission which explained how both subsections 28(1) and 14(1)(c) of LA FOIP applied to the requested information. During this review, the SPS also confirmed to my office that subsection 14(1)(c) of LA FOIP was meant to be applied to the requested information from the outset, but due to an error, it was overlooked when the first response letter was sent to the Applicant.

II RECORDS AT ISSUE

[6] The SPS identified a five-page document and a video as responsive to the Applicant's request. The document and the video were withheld in their entirety in accordance with subsections 14(1)(c) and 28(1) of LA FOIP.

III DISCUSSION OF THE ISSUES

1. Does my office have jurisdiction to review this matter?

[7] On January 1, 2018, amendments to subsection 2(f) of LA FOIP came into force which extended the meaning of a 'local authority' to include police services. Subsection 2(f) provides:

2 In this Act:

...

(f) "local authority" means:

...

(viii.1) a police service or regional police service as defined in *The Police Act, 1990*;

[8] The SPS is a police service as defined in *The Police Act, 1990*. The application for access to information in this case was received by the SPS after January 1, 2018, therefore I have jurisdiction to review this matter.

2. Did the SPS properly apply subsection 14(1)(c) of LA FOIP to the withheld records at issue?

[9] Subsection 14(1)(c) of LA FOIP provides:

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

...

- (c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

[10] In order for subsection 14(1)(c) of LA FOIP to apply, both parts of the following test must be met:

1. Does the public body's activity qualify as a "lawful investigation"?
2. Does one of the following exist?
 - a. The release of information would interfere with a lawful investigation, or
 - b. The release of information would disclose information with respect to a lawful investigation.

1. Does the public body's activity qualify as a "lawful investigation"?

[11] My office has defined a "lawful investigation" as an investigation that is authorized or required and permitted by law. In its submission to my office, the SPS stated that the investigation "concerning this request was conducted by [SPS] officers into a possible contravention of the *Criminal Code*..." The SPS' submission further stated that the document and video responsive to the Applicant's request were:

...compiled and conducted during the course of a lawful investigation. All the information contained within the record was compiled as part of the police investigation into the circumstances surrounding the alleged offence.

[12] According to the SPS' submission, the document and the video contain a personal account of an individual's allegations against the Complainant that could be criminal in nature. The video is an interview between an SPS investigator and the potential victim. The five-page document is a summary of the video.

[13] The SPS' website offers details regarding investigations for this type of offense. The website states that the process involves the recording of an interview with the potential victim where they are asked by an investigator to describe, in as much detail, the alleged offense. The investigator's role is to collect evidence and determine if there are reasonable probable grounds to lay charges. The contents of the video, and the document summarizing the video, appear consistent with the SPS investigative process and were also prepared in the course of a lawful investigation pursuant to the *Criminal Code*. As such, I am satisfied that the SPS' activities in this case qualifies as a "lawful investigation".

2. Does one of the following exist?

a. The release of information would interfere with a lawful investigation, or

b. The release of information would disclose information with respect to a lawful investigation.

[14] My office's *IPC Guide to Exemptions for FOIP and LA FOIP* (Guide) has defined interference with a lawful investigation to include hindering or hampering an ongoing investigation and anything that would detract from an investigator's ability to pursue the investigation. In regards to disclosing information with respect to a lawful investigation, my office's Guide states that it is only necessary for a public body to demonstrate that the information in the record is information with respect to a lawful investigation to meet this part of the test.

[15] In their submission, the SPS provides details of the various considerations upon which the SPS exercised their discretion in regards to subsection 14(1)(c) of LA FOIP. Among these considerations was the importance of law enforcement privilege and protecting the confidentiality of law enforcement records. Moreover, the SPS indicated in their submission that their investigation file was closed sometime in 2013, but the file was referred to another investigative body for further investigation. Given that the records at issue would disclose information with respect to a lawful investigation, I find that this part of the test is also met. As both parts of the test are met, I find that subsection 14(1)(c) of LA FOIP applies to the records at issue and that the SPS properly applied this subsection to the withheld records.

3. Did the SPS properly apply subsection 28(1) of LA FOIP to the records at issue?

[16] The SPS' August 17, 2018 response letter to the Applicant stated that access to the records was refused as "...their release would disclose personal information of an individual or individuals, as per section 28(1) of the Act."

[17] 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**.

[18] I have already found in the preceding section that subsection 14(1)(c) of LA FOIP applies to the records at issue, and that the SPS properly applied this subsection when they withheld all the records. Therefore I do not need to consider the application of subsection 28(1) of LA FOIP in this case.

4. Refusing the Applicant Access to their Own Information

[19] Because the records at issue contain the views and opinions of another individual with respect to the Applicant, and this information constitutes the Applicant's personal

information as defined in subsection 23(1)(h) of FOIP, I must also consider whether the SPS may also refuse the Applicant access to their own personal information in this case.

[20] Subsection 30(1) of LA FOIP gives individuals a general right of access to their own personal information, as follows:

Individual's access to personal information

30(1) Subject to Part III and subsections (2) and (3), an individual whose personal information is contained in a record in the possession or under the control of a local authority has a right to, and:

(a) on an application made in accordance with Part II; and

(b) on giving sufficient proof of his or her identity;

shall be given access to the record.

[21] Subsection 30(1) of LA FOIP is clear that access shall be given, unless PART III Exemptions of LA FOIP applies. PART III includes, among other exemptions, the discretion on the head of an institution to refuse access to records as per subsection 14(1)(c) – which is related to law enforcement and investigations. In this regard, the SPS' submission acknowledges that the responsive records contain the Applicant's personal information, but argues that "...the Applicant's right to his own personal information does not override the exemptions contained in LA FOIP to protect the confidentiality of records created during a lawful investigation."

[22] I have already found that subsection 14(1)(c) of LA FOIP was properly applied by the SPS to the records at issue. Therefore, I find that the Applicant is not entitled to access to their own personal information, which is contained in the records at issue.

IV FINDINGS

[23] I find that subsection 14(1)(c) of LA FOIP applies to the records at issue and that the SPS properly applied this subsection to the withheld records.

[24] Since subsection 14(1)(c) of LA FOIP applies, I find that the Applicant is not entitled to access to their own personal information, which is contained in the records at issue.

V RECOMMENDATION

[25] I recommend the SPS continue to withhold the records.

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

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