



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 208-2019, 209-2019, 210-2019, 294-2019

Saskatoon Police Service

June 17, 2020

Summary:

The Applicant made four access to information requests to the Saskatoon Police Service (SPS). The Applicant requested a review of the SPS's responses that the requests were deemed abandoned for three requests as well as portions of a record was withheld as not being responsive to the request for the fourth request. The Commissioner found that the applications were not complete as the application fee was not paid for three of the requests and portions of the record pertaining to the fourth request was withheld appropriately.

I BACKGROUND

Request 208-2019

[1] On February 20, 2019, the Applicant made the following access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the Saskatoon Police Service (SPS) for:

- All records relating to rollerblading and me personally.
- All records relating to enforcement of a rollerblading prohibition of any form in any location in Saskatoon.

[2] On February 26, 2019, SPS responded to the Applicant indicating that they had not submitted the application fee along with their request and would proceed with processing the request once the application fee had been provided and added:

We understand that we have previously waived this fee, however are not obligated to continue to do so.

[3] On May 19, 2019, the SPS wrote to the Applicant indicating that, as it had not received the application fee and had not heard from them, the SPS had deemed the request abandoned pursuant to subsection 7.1(1) of LA FOIP.

[4] On June 27, 2019, my office received a request from the Applicant to review SPS's response to their access request.

[5] On July 4, 2019, my office advised both the Applicant and SPS that it would be undertaking a review.

Request 209-2019

[6] On March 25, 2019, the Applicant made the following access to information request under LA FOIP to the SPS requesting:

Send me all records relating to me between the date of my previous request and the date on which you respond, be it within 30 days or within 8 months.

[7] Along with this request, the Applicant included a statement of benefit payments from the Ministry of Social Services.

[8] On March 28, 2019, the SPS wrote to the Applicant indicating that the application fee was not received. It noted that LA FOIP allows for two types of fees to be charged; an application fee and a processing fee and that it would waive the processing fee, but not the application fee.

[9] On May 28, 2019, the SPS wrote to the Applicant indicating that, as they had not received the application fee and had not heard from them, the SPS had deemed the request abandoned pursuant to subsection 7.1(1) of LA FOIP.

[10] On June 27, 2019, my office received a request from the Applicant to review SPS's response to their access request.

[11] On July 4, 2019, my office advised both the Applicant and SPS that it would be undertaking a review.

Request 210-2019

[12] On June 6, 2019, the Applicant made the following access to information request under LA FOIP to the SPS requesting:

Please send a record of the property you took possession of on that date [April 18, 2019] to the address above, I'll need it to sue.

[13] On June 11, 2019, the SPS wrote to the Applicant indicating that it would not proceed with the request until the application fee was paid.

[14] On June 20, 2019, the SPS notified the Applicant that, if payment was not received by July 11, 2019, their request was being deemed abandoned as they had not submitted the application fee.

[15] On June 27, 2019, my office received a request from the Applicant to review SPS's response to their access request.

[16] On July 4, 2019, my office advised both the Applicant and SPS that it would be undertaking a review.

Request 294-2019

[17] On January 18, 2019, the SPS received the following access to information request under LA FOIP from the Applicant requesting:

Mail a copy of all manuals, policies, guidelines or procedures relating to rollerblading in downtown Saskatoon to the address above. I don't have the ability to pay for this information.

[18] On February 13, 2019, SPS responded to the Applicant with responsive records indicating that:

Please find attached records responsive to your request. Please note that some information has been withheld as it was non-responsive to your request.

[19] On September 11, 2019, my office received a request from the Applicant to review SPS's decision to partially withhold one record and its search efforts.

[20] On September 12, 2019, my office advised both the Applicant and SPS that it would be undertaking a review.

II RECORDS AT ISSUE

[21] As my office is reviewing the fee waiver and applications deemed abandoned for three of the files, there are no records at issue for these cases.

[22] One file contains two records which are policies. One is a six page record which was partially withheld.

III DISCUSSION OF THE ISSUES

1. Does LA FOIP apply in these circumstances?

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

2. Do the circumstances exist for a fee waiver?

[24] The Applicant requested my office review SPS's decision to not provide a waiver of the application fees.

[25] Subsection 5(1) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) provides:

5(1) An application fee of \$20 is payable at the time an application for access to a record is made.

[26] My office's authority to consider the Applicant's request can be found at subsection 38(1)(a.2) of LA FOIP which provides:

38(1) Where:

...

(a.2) an applicant believes that all or part of the fee estimated should be waived pursuant to subsection 9(5);

...

the applicant or an individual may apply in the prescribed form and manner to the commissioner for a review of the matter.

[27] Subsection 9(5) of LA FOIP provides:

9(5) Where a prescribed circumstance exists, the head may waive payment of all or any part of the prescribed fee.

[28] PART III of the LA FOIP Regulations includes the prescribed form for requesting information, i.e., the *Access to Information Request Form*. The form provides:

You may request a waiver of the application fee or additional fees, but may be required to provide evidence of substantial financial hardship.

[29] The prescribed circumstances for waiving a fee can be found at subsection 8(1) of the LA FOIP Regulations. Based on the information provided to my office, the Applicant appears

to have requested a fee waiver based on the criteria established at subsection 8(1)(a) of the LA FOIP Regulations which provides:

8(1) For the purposes of subsection 9(5) of the Act, the following circumstances are prescribed as circumstances in which a head may waive payment of fees:

(a) with respect to the fees set out in subsection 5(1), if the application involves the personal information of the applicant;

[30] Subsection 8(1)(a) of the LA FOIP Regulations also provides that if the information requested by the Applicant is personal information of the Applicant, it may waive payment of the fees. In this request, some of the information that the Applicant is requesting would meet this criteria, but part of the request would not qualify as personal information.

[31] As the request also included information of which was not personal information, I find SPS's denial to waive the application fee was appropriate.

3. Did the SPS appropriately deem the request abandoned?

[32] In its written correspondence to the Applicant and in its written submission to my office, SPS stated it treated the Applicant's requests as abandoned pursuant to subsections 7.1(2) and 7.1(3) of LA FOIP, which provides:

7.1(2) The head shall provide the applicant with a notice advising that the application is deemed to be abandoned.

(3) A notice provided pursuant to subsection (2) is to state that the applicant may request a review by the commissioner within one year after the notice is given.

[33] Often, it is clear that an applicant has decided to not pursue an access request. They may indicate to the public body in writing or by phone their intention to not proceed. For example, they may have found the information some other way, or they no longer need the information.

[34] Subsection 7.1(1) of LA FOIP, however, is intended to address circumstances where an applicant ceases to respond at certain times. This subsection of LA FOIP provides that a

public body can consider an application abandoned if, the applicant does not respond within 30 days when: 1) the public body invites the applicant to supply additional details to help identify the record pursuant to subsection 6(3) of LA FOIP; or 2) the public body completes processing the request and provides notice pursuant to subsection 7(2)(a) of LA FOIP. Neither of these situations exist for these requests and therefore, do not meet the criteria for an abandoned request.

[35] In this instance, the Applicant had not provided the application fee at the time the application was made, and therefore their application was incomplete.

[36] SPS attempted to work with the Applicant and wrote to them requesting the application fees for each request before it could begin processing these requests. It did not receive responses to its requests and did not receive the application fee. Therefore, I find that the request was not abandoned; rather, the application was incomplete.

4. Is there information not responsive to the Applicant's access to information request?

[37] When a local authority receives an access to information request, it must determine what information is responsive to the access to information request.

[38] Responsive means relevant. The term describes anything that is reasonably related to the request. It follows that any information or records that do not reasonably relate to an Applicant's request will be considered "not-responsive". The Applicant's access to information request itself sets out the boundaries of relevancy and circumscribes the records or information that will ultimately be identified as being responsive.

[39] A local authority can sever information as non-responsive only if the Applicant has requested specific information, such as their own personal information. The local authority may treat portions of a record as non-responsive if they are clearly separate and distinct and not reasonably related to the access to information request.

[40] The purpose of LA FOIP is best served when a local authority adopts a liberal interpretation of a request. If a local authority has any doubts about its interpretation, it has a duty to assist the Applicant by clarifying or reformulating the request.

[41] In its submission, SPS indicated that it redacted information as non-responsive because it contained information related to other bylaws and was not related to rollerblading.

[42] Upon review of the information, I agree that the information redacted is non-responsive and does not relate to the information requested by the Applicant.

5. Did the SPS conduct an adequate search?

[43] The focus of a search review is whether or not the public body conducted a reasonable search. A *reasonable search* is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request.

[44] 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. LA FOIP does not require the public body to prove with absolute certainty that records do not exist.

[45] When a public body receives a notification letter from my office requesting details of its search efforts, the following can be included in the public body’s submission (non-exhaustive):

Outline the *search strategy* conducted:

- For personal information requests – explain how the individual is involved with the government institution (i.e. client, employee, former employee etc.) and why certain departments/divisions/branches were included in the search.

- For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search:
- Describe how records are classified within the records management system. For example, are the records classified by:
 - alphabet
 - year
 - function
 - subject
- Consider providing a copy of your organization’s record schedule and screen shots of the electronic directory (folders & subfolders).
- If the record has been destroyed, provide copies of record schedules and/or destruction certificates.
- Explain how you have considered records stored off-site.
- Explain how records that may be in the possession of a third party but in the government institution’s control have been searched such as a contractor or information management service provider.
- Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
- Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicate what key terms were used to search if applicable.
- Indicate the calendar dates each employee searched.
- Indicate how long the search took for each employee.
- Indicate what the results were for each employee’s search.
- Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this,

see the IPC resource, *Using Affidavits in a Review with the IPC* available on our website.

[46] The above list is meant to be a guide. Each case will require different search strategies and details depending on the records requested.

[47] In the SPS's submission, it indicated that the search consisted of all internal SPS policies as well as the *Officer Handbook* and police officer guides. The Privacy Officer also contacted the Inspector in charge of the Central Patrol as well as BEAT officers to inquire whether there were any unit specific policies, guidelines or procedures in regards to rollerblading and was advised that none existed.

[48] I am satisfied that the SPS has performed a reasonable search for responsive records.

IV FINDINGS

[49] I find that the three requests were not abandoned but were incomplete.

[50] I find that the information redacted in the fourth request is non-responsive to the request.

[51] I find that, for the fourth request, a reasonable search was performed for responsive records.

V RECOMMENDATIONS

[52] I recommend that SPS not deem the requests abandoned and, notify the Applicant that their requests were incomplete without the application fee and therefore, it cannot proceed until the fee in each case is paid.

[53] I recommend the SPS continue to withhold the redacted information.

Dated at Regina, in the Province of Saskatchewan, this 17th day of June, 2020.

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