



## **REVIEW REPORT 230-2024**

### **Saskatoon School Division No. 13**

**February 11, 2025**

#### **Summary:**

The Saskatoon School Division No. 13 (School Division) received an access to information request from the Applicant for records pertaining to a named student. The School Division withheld the records in full pursuant to subsections 14(1)(a), (c), (d), (g) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and because the records were non-responsive to the access request. At the Applicant's request, the A/Commissioner undertook a review of the School Division's decision. The A/Commissioner found that the School Division did not meet the burden of proof pursuant to section 51 of LA FOIP in demonstrating that subsections 14(1)(a), (c), (d) and (g) of LA FOIP applied. He, however, did find that the School Division properly applied subsection 28(1) of LA FOIP, and that it properly considered some records as being non-responsive. Where he found the School Division properly identified records as being non-responsive, the A/Commissioner also identified that portions would contain personal information as defined by subsections 23(1)(b), (d), (e) and (k) of LA FOIP and so subsection 28(1) of LA FOIP would apply to those portions. The A/Commissioner found that the School Division did not meet its obligation pursuant to section 8 of LA FOIP; however, he found there were portions where subsection 28(1) of LA FOIP would not apply and that the School Division should release those portions to the Applicant within 30 days of the issuance of this Report. The A/Commissioner also recommended that, going forward, the School Division turn its mind towards its obligations pursuant to section 8 of LA FOIP.

#### **I BACKGROUND**

[1] On September 9, 2024, the Saskatoon School Division No. 13 (School Division) received the Applicant's access to information request from the Applicant, which was as follows:

Any and all records, including email and written correspondence, incident reports, complaints or other documentation, sent or received by SPSD employees regarding supports needed for or concerns about supporting the learning of [Student X] at [name of school] and any other SPSD school [they may have] attended between August 1, 2018 and September 9, 2024. Please also include any complaints regarding the youth filed by other students or their parents/guardians to the schools or SPSD directly.

- [2] As noted in the Applicant's request, the timeframe was August 1, 2018 to September 9, 2024. The School Division confirmed on October 7, 2024, that the School Division did not charge an application fee.
- [3] By email dated September 12, 2024, the School Division issued its section 7 decision to the Applicant stating that it was denying full access to the records pursuant to subsection 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [4] On September 27, 2024, the Applicant asked the A/Commissioner to undertake a review of the School Division's response.
- [5] On October 8, 2024, my office issued notice to the Applicant and the School Division of the A/Commissioner's intention to undertake a review.
- [6] On November 4, 2024, the School Division issued an updated section 7 decision to notify the Applicant that it was also relying on subsections 14(1)(a), (c), (d) and (g) of LA FOIP to deny access in full in addition to subsection 28(1) of LA FOIP.
- [7] The School Division provided my office with the responsive records and index of records on November 6, 2024, and with its submission on December 10, 2024. The Applicant did not provide a submission.

## **II RECORDS AT ISSUE**

- [8] At issue are 1,813 pages the School Division has withheld in full as follows:

- Subsections 14(1)(a), (c), (d) and (g) of LA FOIP (in full) – pages 1 to 130, 132 to 164, 166, 185, 186, 215, 216, 230 to 257, 262 to 307, 313 to 323, 337 to 350, 356 to 367, 380 to 533, 544 to 623, 635 to 789, 795 to 808, 813 to 914, 924 to 931, 946 to 1102, 1010 to 1012, 1015 to 1027, 1040 to 1060, 1064 to 1074, 1120 to 1123, 1154 to 1158, 1163 to 1188, 1210 to 1275, 1280, 1296 to 1299, 1328 to 1366, 1378 to 1535, 1572 to 1578, 1590 to 1609, 1615, 1616, 1619 to 1635, 1638 to 1687, and 1693 to 1813.
- Subsection 28(1) of LA FOIP (in full) – pages 1 to 120 to 164, 166, 177 to 183, 185 and 186, 188 to 193, 201 to 623, 629 to 1012, 1015 to 1109, 1116 to 1123, 1154 to 1158, 1163 to 1188, 1210 to 1275, 1280, 1296 to 1299, 1328 to 1366, 1378 to 1535, 1555, 1572 to 1578, 1590 to 1609, 1615 and 1616, 1619 to 1635, 1638 to 1687, and 1693 to 1813.
- Non-responsive (in full) - pages 165, 167, 184, 187, 184 to 200, 624 to 628, 1013, 1014, 1110 to 1115, 1124 to 1153, 1159 to 1162, 1189 to 1209, 1276 to 1279, 1281 to 1295, 1300 to 1327, 1367 to 1377, 1536 to 1554, 1556 to 1571, 1579 to 1589, 1610 to 1614, 1617, 1618, 1636, 1637 and 1688 to 1692.

### **III DISCUSSION OF THE ISSUES**

#### **1. Do I have jurisdiction?**

[9] The School Board is a “local authority” pursuant to subsection 2(1)(f)(viii) of LA FOIP; therefore, I have jurisdiction to conduct this review.

#### **2. Did the School Division properly apply subsections 14(1)(a), (c), (d) and (g) of LA FOIP?**

[10] The School Division applied subsections 14(1)(a), (c), (d) and (g) of LA FOIP, in full, to pages 1 to 130, 132 to 164, 166, 185, 186, 215, 216, 230 to 257, 262 to 307, 313 to 323, 337 to 350, 356 to 367, 380 to 533, 544 to 623, 635 to 789, 795 to 808, 813 to 914, 924 to 931, 946 to 1102, 1010 to 1012, 1015 to 1027, 1040 to 1060, 1064 to 1074, 1120 to 1123, 1154 to 1158, 1163 to 1188, 1210 to 1275, 1280, 1296 to 1299, 1328 to 1366, 1378 to 1535, 1572 to 1578, 1590 to 1609, 1615, 1616, 1619 to 1635, 1638 to 1687, and 1693 to 1813.

[11] Subsections 14(1)(a), (c), (d) and (g) of LA FOIP provide:

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

(a) prejudice, interfere with or adversely affect the detection, investigation, prevention or prosecution of an offence or the security of a centre of lawful detention;

...

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

(d) be injurious to the local authority in the conduct of existing or anticipated legal proceedings;

...

(g) deprive a person of a fair trial or impartial adjudication;

[12] Section 14 of LA FOIP uses the word “could” versus “could reasonably be expected to” as seen in other provisions of LA FOIP. The threshold for could is somewhat lower than a reasonable expectation. The requirement for could is simply that the release of the information could have the specified result. There would still have to be a basis for asserting that harm could occur. If it is fanciful or exceedingly remote, the exemption should not be invoked (*Guide to LA FOIP*, Chapter 4: “Exemptions from the Right of Access”, updated October 18, 2023 [*Guide to LA FOIP*, Ch. 4], p. 44).

[13] Subsection 14(1)(a) of LA FOIP is a discretionary harm-based exemption. It permits refusal of access in situations where release of a record could prejudice, interfere with or adversely affect the detection, investigation, prevention or prosecution of an offence or the security of a centre of lawful detention. Regarding subsection 14(1)(a) of LA FOIP, pages 45 to 47 of my office’s *Guide to LA FOIP*, Ch. 4, provides the following definitions:

- “Prejudice” in this context refers to detriment to the detection, investigation, prevention or prosecution of an offence or the security of a centre of lawful detention.
- “Interfere” with includes hindering or hampering an ongoing investigation and anything that would detract from an investigator’s ability to pursue the investigation.

- “Adversely affect” in this context means to have a harmful or unfavorable impact on the detection, investigation, prevention or prosecution of an offence or the security of a centre of lawful detention.
- “Detection” is the act of discovering or revealing something that is hidden or barely perceptible, especially to solve a crime.
- “Investigation” can include police, security or administrative investigations or a combination of these. Investigation has been defined, in general terms, as a systematic process of examination, inquiry and observation.
- “Prevention” means the stopping of something, especially something bad, from happening; to hinder or impede. In the context of subsection 14(1)(a) of LA FOIP, it means the stopping of an offence.
- A “prosecution”, in this context, refers to proceedings in respect of a criminal or quasi-criminal charge laid under an enactment of Saskatchewan or Canada and may include regulatory offences that carry true penal consequences such as imprisonment or a significant fine.
- “Offence” means a violation of the law; a crime.
- “Security” means a state of safety or physical integrity. Security includes securing, ensuring safety or protecting from danger, theft or damage. Security means sufficient security.
- “Lawful detention” means any person held in custody pursuant to a valid warrant or other authorized order. It extends to individuals remanded in custody (charged but not yet tried or convicted). It does not include individuals released under bail supervision.
- “Centre of lawful detention” is a centre where persons are detained when suspected of a crime, awaiting trial, or sentencing, found to be an illegal immigrant or youthful offender, or for political reasons. It can also include a centre where persons are in custody under federal or provincial statute. In general, any person held in custody pursuant to a valid warrant or other authorized order is under lawful detention.

[14] Subsection 14(1)(c) of LA FOIP is a discretionary class-based and harm-based exemption. Meaning it contains both a class and harm-based component. It permits refusal of access in situations where the release of a record could interfere with a lawful investigation or disclose information with respect to a lawful investigation. Regarding subsection 14(1)(c) of LA FOIP, my office uses the following two-part test to determine if subsection 14(1)(c) of LA FOIP applies:

1. Does the local authority's activity qualify as a "lawful investigation"?
2. Does one of the following exist?
  - a) Could release of the following information interfere with a lawful investigation? or
  - b) Could release disclose information with respect to a lawful investigation?

(*Guide to LA FOIP*, Ch. 4, pp. 53 to 54)

[15] Pages 53 to 54 provide the following definitions:

- A "lawful investigation" is an investigation that is authorized or required and permitted by law. The local authority should identify the legislation under which the investigation is occurring. The investigation can be concluded, active and ongoing or be occurring in the future. It is not limited to investigations that are conducted by a local authority. In other words, it can include investigations conducted by other organizations (e.g., a police investigation).
- "Interfere with" includes hindering or hampering an investigation and anything that would detract from an investigator's ability to pursue the investigation.
- "With respect to" are words of the widest possible scope; the phrase is probably the widest of any expression intended to convey some connection between two related subject matters.

[16] Subsection 14(1)(d) of LA FOIP is a discretionary harm-based exemption. It permits refusal of access in situations where release of a record could be injurious to the local authority in the conduct of existing or anticipated legal proceedings. Regarding subsection 14(1)(d) of LA FOIP, my office uses the following two-part test to determine if this exemption was properly applied:

1. Do the proceedings qualify as existing or anticipated legal proceedings?
2. Could the disclosure of the record be injurious to the local authority in the conduct of the legal proceedings?

(*Guide to LA FOIP*, Ch. 4, pp. 56-57)

[17] Pages 56 and 57 of my office's *Guide to LA FOIP* provide the following definitions:

- “Legal proceedings” are any civil or criminal proceeding or inquiry in which evidence is or may be given and includes an arbitration.
- “Anticipated” means more than merely possible. To regard as probable.
- “Injury” implies damage or detriment. The exemption is designed to protect the local authority from harm in its existing or anticipated legal proceedings.

[18] Subsection 14(1)(g) of LA FOIP is a discretionary harm-based exemption. It permits refusal of access in situations where release of a record could deprive a person of a fair trial or impartial adjudication. Regarding subsection 14(1)(g) of LA FOIP, my office uses the following three-part test to determine if subsection 14(1)(g) of LA FOIP applies to records:

1. Who is the “person” impacted by possible disclosure?
2. Is there a trial or adjudication occurring now or in the future?
3. Could disclosure of the information deprive the person of a fair trial or impartial adjudication?

(*Guide to LA FOIP*, Ch. 4, pp. 66-67)

[19] Pages 66 and 67 of the *Guide to LA FOIP*, Ch. 4, provide the following definitions:

- “Person” includes an individual, corporation or the heirs, executors, administrators or other legal representatives of a person.
- “Trial” means a formal judicial examination of evidence and determination of legal claims in an adversary proceeding.
- “Adjudication” means the legal process of resolving a dispute, the process of judicially deciding a case.
- “Deprive” means to take away or withhold something that one needs.
- “Fair trial” refers to a trial by an impartial tribunal in accordance with regular procedures; especially a criminal trial in which the defendant’s constitutional and legal rights are respected. It means a hearing by an impartial tribunal; a proceeding which hears before it condemns, which proceeds upon inquiry, and renders judgement only after consideration of evidence and facts as a whole.

- “Impartial adjudication” means a proceeding in which the parties’ legal rights are safeguarded and respected. Not favoring one side more than another; unbiased and disinterested; unswayed by personal interest.

[20] In its submission, the School Division offered the following arguments for its reliance on subsections 14(1)(a), (c), (d) and (g) of LA FOIP:

SPSD has made the decision to further refuse the release of records under subsection 14 (1) (a), (c), (d) and (g) of LAFOIP to ensure that sensitive information is protected for the individual, for law enforcement and for the local authority. The release of this sensitive information could prejudice or interfere with the ongoing criminal investigation, prosecution of an offence, interference with a lawful investigation or disclose information with respect to a lawful investigation, it could be injurious to the local authority in the conduct of existing or anticipated legal proceedings and/or deprive a person of a fair trial or impartial adjudication.

The incident involving the student whose personal information is being requested resulted in a police investigation which may have already, or could subsequently, result in criminal charges. The local authority has limited knowledge of the precise charges but has cooperated with the police throughout the investigation. As the incident took place on school property, the local authority has specific knowledge of the details of the investigation which were not released to the public. By releasing this information, the local authority may be prejudicing:

1. The student to which the information pertains;
2. Law enforcement in conducting the investigation; or
3. The prosecution in bringing their case.

Further, as harm resulted from this incident, and the local authority could possibly be seen as vicariously liable in a future legal proceeding to recover damages, the local authority may also be prejudiced in the release of some information contained within the scope of this request.

[21] In its arguments, however, the School Division only cited key words from subsections 14(1)(a), (c), (d) and (g) of LA FOIP for each page number where it is claiming that any of these provisions would apply. It did not identify any harm that could result from the release of information to the Applicant, and my office cannot assume what harm(s) the School Division has identified or believe would result from disclosure. As I said in my office’s [Review Report 119-2018](#) at paragraph [140], merely reciting words from the exemption is not enough to demonstrate that a harm could occur.



[22] Section 51 of LA FOIP places the burden of proof upon the School Division for establishing that access to the record may or must be refused. Section 51 of LA FOIP provides:

**51** In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned.

[23] I find that the School Division has not met the burden of proof pursuant to section 51 of LA FOIP as it has not demonstrated that subsections 14(1)(a), (c), (d) and (g) of LA FOIP apply to the records identified at paragraph [10] of this Report. I will, however, consider the School Divisions' reliance on subsection 28(1) of LA FOIP to these records.

**3. Did the School Division properly apply subsection 28(1) of LA FOIP?**

[24] The School Division withheld the following pages, in full, pursuant to subsection 28(1) of LA FOIP: 1 to 120 to 164, 166, 177 to 183, 185 and 186, 188 to 193, 201 to 623, 629 to 1012, 1015 to 1109, 1116 to 1123, 1154 to 1158, 1163 to 1188, 1210 to 1275, 1280, 1296 to 1299, 1328 to 1366, 1378 to 1535, 1555, 1572 to 1578, 1590 to 1609, 1615 and 1616, 1619 to 1635, 1638 to 1687, and 1693 to 1813. The School Division cited that these pages of the records invariably contain personal information as defined by subsections 23(1)(a), (b), (c), (d), (e), (h) and (k) of LA FOIP.

[25] Subsection 28(1) of LA FOIP provides as follows:

**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.

[26] Section 28 of LA FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains consents to its disclosure or if disclosure without consent is authorized by one of the enumerated subsections of 28(2) or section 29 of LA FOIP (*Guide to LA FOIP*, Chapter 6, "Protection of Privacy", updated February 27, 2023 [*Guide to LA FOIP*, Ch. 6], p. 163).

[27] Subsection 28(1) of LA FOIP applies only to personal information. Personal information is information that is about an identifiable individual, and that is personal in nature. Subsection 23(1) of LA FOIP provides a non-exhaustive list of examples of what qualifies as personal information as follows:

**23(1)** Subject to subsections (1.1) and (2), “personal information” means personal information about an identifiable individual that is recorded in any form, and includes:

- (a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;
- (b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) information that relates to health care that has been received by the individual or to the health history of the individual;
- (d) any identifying number, symbol or other particular assigned to the individual;
- (e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;
- (f) the personal opinions or views of the individual except where they are about another individual;
- (g) correspondence sent to a local authority by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;
- (h) the views or opinions of another individual with respect to the individual;
- (i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;
- (j) information that describes an individual’s finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or
- (k) the name of the individual where:
  - (i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

[28] Personal information cannot be released without the subject individual's consent, or unless one of the enumerated provisions at subsection 28(2) or section 29 of LA FOIP apply.

[29] In its submission, the School Division laid out its position on which provisions of subsection 23(1) of LA FOIP apply to each type of document listed. Invariably, the School Division cited subsections 23(1)(a), (b), (c), (d), (e), (h) and (k) of LA FOIP. In addition, the School Division states, in part, as follows:

...The records in question contain personal information relating to the student, including details about support measures for learning and behavior. Disclosing even redacted versions of these records would inherently confirm their existence and divulge sensitive personal information. This outcome would contravene Section 28 of LA FOIP, which strictly prohibits the disclosure of personal information without appropriate consent. Consequently, the responsive records cannot be severed or released to ensure full compliance with privacy regulations under LAFOIP.

[30] As noted, this access request pertains to Student X. The Applicant has not claimed to have any relationship to that student. No one who is authorized pursuant to LA FOIP has consented to the release of any information pertaining to Student X.

[31] As the School Division stated, the records themselves contain various types of documents related to Student X. I note some also involve records where Student X is named alongside other students or is named as part of records such as lists. As previously stated, the School Division has identified how various pages of the record include personal information as defined by subsection 23(1) of LA FOIP. In so doing, they state that the identified pages contain information relating to the race, age, educational history, health care or health history, identifying numbers or symbols, home address or telephone number and views or opinions of Student X (or of other students named alongside). Upon review, I note the following about the pages of the records identified at paragraph [10] of this Report:

- Pages 1 to 164: contain incident plans and various reports regarding Student X that relate to behaviours, assessments, interventions and opinions about them. There is

also information that is normally referred to as tombstone data, or data such as home addresses or phone numbers, as well as information that would relate to race or disability/health. There is also information that would be personal in nature to Student X, or that would constitute personal information when combined with their identity. There is similar information on some pages that refers to other students where they are named in addition to Student X (e.g., on a list of names). The dates on the records appear to fall within the scope of the access request. I am satisfied that these records contain the personal information of Student X and other students as defined by subsections 23(1)(a), (b), (c), (e), (h) and (k) of LA FOIP.

- Pages 166, 177 to 183, 185, 186, 188 to 193: contain notes primarily in relation to Student X, although there are also notes in relation to other students mixed in (or where they appear in addition to Student X, such as on a list). These notes fall within the scope of the dates of the access request, and document meetings or conversations about Student X's needs, or the needs of other students. There are passages that include opinions about Student X or other students. There is also information that would be personal in nature to Student X or other students that would constitute personal information when combined with their identity. There is also information regarding race or disability or health. I am satisfied that these records contain the personal information of Student X and other students as defined by subsections 23(1)(a), (b), (c), (e), (h) and (k) of LA FOIP.
- Pages 201 to 623, 629 to 1012, 1015 to 1109, 1116 to 1123, 1154 to 1158, 1163 to 1188, 1210 to 1275, 1280, 1296 to 1299, 1328 to 1326, 1378 to 1535, 1555, 1572 to 1578, 1509 to 1609, 1615, 1616, 1619 to 1635, 1638 to 1687, and 1693 to 1813: contain emails and attachments regarding Student X; emails appear to have been sent amongst school/School Division personnel. The contents of the emails and attachments speak to issues such as supports and funding. Some documents contain data elements such as personal email addresses or other contact information for parents of other students, and also contact information for Student X. There are passages that would include opinions about Student X or other students. On one page, Student X's health number is stated. There is also information that would be personal in nature to Student X or other students that would constitute personal information when combined with their identity. There is also information regarding race or disability or health. The records fall within the scope of the access request. I am satisfied that these records contain the personal information of Student X and other students as defined by subsections 23(1)(a), (b), (c), (d), (e), (h) and (k) of LA FOIP.

[32] Based on the above, I find that the School Division properly applied subsection 28(1) of LA FOIP to the pages outlined at paragraph [24] of this Report.

[33] There are some exceptions to this that I will discuss after I review if there are non-responsive records and if the School Division met its obligations pursuant to section 8 of LA FOIP.

**4. Are there records that are not responsive to the Applicant's access to information request?**

[34] The School Division identified the following pages as not responsive to the Applicant's access request: 165, 167, 184, 187, 184 to 200, 624 to 628, 1013, 1014, 1110 to 1115, 1124 to 1153, 1159 to 1162, 1189 to 1209, 1276 to 1279, 1281 to 1295, 1300 to 1327, 1367 to 1377, 1536 to 1554, 1556 to 1571, 1579 to 1589, 1610 to 1614, 1617, 1618, 1636, 1637 and 1688 to 1692.

[35] A local authority must determine what records are responsive to an access to information request. The *Guide to LA FOIP*, Ch. 3 at page 26, defines "responsive" as meaning relevant. That is, it is a term describing records that are reasonably related to the request. Anything not related, then, is not responsive. The Applicant's access request itself sets out the boundaries of which records are deemed responsive. Factors to consider is if the records would fit within the requested timeframe or would reasonably relate to the wording of the access request.

[36] In this matter, the School Division identified that the records it deemed as not being responsive concerned subjects not identified by the Applicant, or because the information pertained wholly to other students. In dissecting the Applicant's access request, this appears to be limited to records, "regarding supports needed for or concerns about supporting the learning of [Student X]." Records that are non-responsive, then, would fall outside this scope.

[37] I note that the pages at paragraph [34] that the School Division identified as non-responsive do contain what I would consider personal information as defined by subsections 23(1)(b), (d), (e) and (k) of LA FOIP. Some information on these pages pertains to Student X, while other pages may entirely pertain to other students. The question is if the pages identified

contain information that falls within or outside the scope of the Applicant's access request. Upon review, I outline some examples of what the School Division identifies as non-responsive as follows:

- Pages 165 and 167 to 176: these pages pertain to other students, and so are not responsive.
- Pages 184, 187, 194 to 200, and 624 to 628: pages 184 and 187 concern clothing of Student X and other students; page 194 to 200 contain an email and attachments where an event involving Student X and other students is discussed, but which is not related to the topic(s) identified by the Applicant; and pages 624 to 628 include an email and attachment naming Student X and other students in a context not related to the access request.
- Pages 1013, 1014, 1110 to 1115, 1124 to 1153, 1159 to 1162, 1189 to 1209, 1276 to 1279, 1281 to 1295, 1300 to 1327, 1367 to 1377, 1536 to 1554, and 1556 to 1571: these pages include emails and attachments that speak to topics such as general student programs offered by the School Division, fees associated with unrelated programs or needs, and student grade lists.
- Pages 1579 to 1589, 1610 to 1614, 1617, 1618, 1636, 1637 and 1688 to 1692: these pages include emails and attachments that speak to topics such as general planning for coverage where Student X or other students may be named that occur on different dates, tests and student placements involving Student X or other students.

[38] Based on my review, I am satisfied that the pages the School Division identified as non-responsive fall outside the scope of the Applicant's access request. As such, I find that the School Division properly identified the pages outlined at paragraph [34] of this Report as not responsive to the Applicant's access to information request.

[39] Normally, when I find that records are not responsive, I recommend that the local authority release them subject to any exemptions the local authority finds would apply. In this matter, I have stated that the pages identified at paragraph [34] of this Report would contain personal information as defined by subsections 23(1)(b), (d), (e) and (k) of LA FOIP and so find that subsection 28(1) of LA FOIP would apply to them. I recommend that the School Division continue to withhold the pages identified at paragraph [34] of this Report pursuant to subsection 28(1) of LA FOIP.

[40] There are some exceptions, however, that I will address in the next part of this Report.

**5. Did the School Division comply with section 8 of LA FOIP?**

[41] As I mentioned previously in this Report, I deferred recommendations for subsections 14(1)(a), (c), (d), (g) and 28(1) of LA FOIP, and for the non-responsive records. I wanted to first determine if the School Division met its obligation pursuant to section 8 of LA FOIP and if any records should be released. Section 8 of LA FOIP states 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.

[42] Regarding section 8, the School Division states as follows:

As the search parameters for this request contained the student’s specific name and also that the records pertained to supports needed for or concerns about supporting the learning of the student, there was no way to sever the personal information such that it would not be apparent that it pertained to personal information about the student...

[43] While most records involve Student X and other students, and while disclosure of many parts, such as email headers and footers would reveal personal information such as the schools they attended, a local authority should still turn its mind towards parts of a record that can be released because they are innocuous or would not disclose the type of information being withheld by the exemption claimed. Doing so supports transparency and is based on a local authority’s obligation to sever a record pursuant to section 8 of LA FOIP.

[44] “Severability” is the principle described in section 8 of LA FOIP requiring that information be disclosed if it does not contain, or if it can be reasonably severed from, other information that the head of a local authority is authorized or obligated to refuse to disclose under the Act. “Severing” is the exercise of blacking out exempt portions of a record and disclosing the remaining portions. A line-by-line review is essential to comply with the principle of severability set out in section 8 of LA FOIP. (*Guide to LA FOIP*, Chapter 3, “Access to Records”, updated May 5, 2023 [*Guide to LA FOIP*, Ch. 3], pp. 67 and 70).

[45] Given this, and on review of the records, there are some portions of all the records where I find that subsection 28(1) of LA FOIP would not apply. These include:

- Pages 183, 251, 266, 306, 363, 398, 460, 500, 658, 662, 672, 691 (except for the school logo, which would disclose the name of the school attended), 968, 979 (except for the header/footer information disclosing the name of the school), 998, 1002, 1014, 1157, 1168, 1275 and 1294 are either blank pages or email confidentiality notices that do not disclose personal information and should be released.
- Page 200 contains an email that is general in nature and would not disclose anything about Student X or any other students.
- Page 322 is a general email stating certain reports are ready; if you remove the header/footer information to not disclose the school, the remainder can be released.
- Page 324 is a general email; if you remove the header/footer information to not disclose the school, the remainder can be released.
- Page 368 is a general email; if you remove the header/footer information to not disclose the school, the remainder can be released.
- Page 380 is an email about a meeting; if you remove the header/footer information to not disclose the school, the remainder can be released.

[46] I recommend that the School Division release information as outlined at paragraph [45] of this Report within 30 days of issuance of this Report.

[47] I add that as the school did not turn its mind towards portions that it could reasonably release, I find that it did not meet its obligations pursuant to section 8 of LA FOIP. I recommend that, going forward, the School Division turn its mind towards complying with section 8 when processing access requests.

#### **IV FINDINGS**

[48] I find that I have jurisdiction to conduct this review.



[49] I find that the School Division did not meet the burden of proof pursuant to section 51 of LA FOIP in demonstrating that subsections 14(1)(a), (c), (d) and (g) of LA FOIP apply as outlined at paragraph [10] of this Report.

[50] I find that the School Division properly applied subsection 28(1) of LA FOIP to the pages identified at paragraph [24] of this Report.

[51] I find that the School Division properly identified the pages outlined at paragraph [34] as not responsive to the Applicant's access to information request, and that subsection 28(1) of LA FOIP would apply to these pages.

[52] I find that the School Division did not meet its obligation pursuant to section 8 of LA FOIP.

## **V RECOMMENDATIONS**

[53] I recommend that the School Division continue to withhold all pages except as identified at paragraph [45] of this Report, and that it release records to the Applicant as identified at paragraph [45] of this Report within 30 days of the issuance of this Report.

[54] I recommend that, going forward, the School Division turn its mind towards complying with section 8 when processing access requests.

Dated at Regina, in the Province of Saskatchewan, this 11<sup>th</sup> day of February, 2025.

Ronald J. Kruzeniski, KC  
A/Saskatchewan Information and Privacy  
Commissioner