



REVIEW REPORT 244-2017

City of Saskatoon

February 7, 2018

Summary: The City of Saskatoon (the City) received an access to information request related to an animal control investigation. The City applied subsection 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to portions of the record and a portion of the record was not responsive to the Applicant's request. The Commissioner found that the City appropriately applied both exemptions to the redacted portions of the record.

I BACKGROUND

[1] On August 31, 2017, the City of Saskatoon (the City) received an access to information request for:

Request for a copy of investigation reports with information on the present location and status of leashed dog that attacked [name of Applicant] on walking path in [name of park] on [date of occurrence], resulting in [injury to Applicant]. Saskatoon Animal Control Agency File Number Occurrence: # [file number]

I am requesting a copy of all investigation reports in the above matter, which include:

1. Identifying information to include first and last name, correct address, postal code of the owner of the dog that attacked me in [name of park] on [date of occurrence] and statement(s) of the owner of the dog.
2. Identifying information first and last names, correct address, postal code of dog owner's companion who was also present when [name of Applicant] was attacked by a dog in [name of park] on [date of occurrence] and her statement(s).
3. Information regarding current licence, history of attacks, immunization records and present location and status of the dog that attacked [name of Applicant].

4. Name of Animal Control Officer doing and completing investigation.

5. All other reports and information regarding this dog attack.

[2] The City responded to the Applicant on September 15, 2017, providing the Applicant with portions of the responsive records to her request. The City withheld the remaining portions of the records indicating the information was not responsive to the request and subsection 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] On October 6, 2017, my office received a request for review from the Applicant. On the same day, my office provided notification to the Applicant and the City of my intention to undertake a review.

[4] My office received a submission from both the City and the Applicant in response to my review.

II RECORDS AT ISSUE

[5] The responsive record consists of 35 pages. In response to the Applicant's request, the City released pages 5, 6 – 13 and 15 in full. As such, these will not be part of the review.

[6] The remaining pages 1 – 4, 14 and 16 – 35 were partially released. The City has indicated one portion of page 14 was withheld as it was non-responsive to the Applicant's request. For the remaining redactions, the City applied subsection 28(1) of LA FOIP to withhold the severed portions of these pages. This review will consider if the City appropriately withheld the severed portions of these pages of the record.

[7] Pages 1 – 4 are written details regarding the incident with the dog. Page 14 is licence information for animal(s) at the address of the dog owner and the name(s) of the individual the animal is licensed to. Pages 16 – 30 are photos of the dog owner's property. Pages 31 – 35 are photos of the dog owner with a leashed dog.

III DISCUSSION OF THE ISSUES

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

1. Did the City of Saskatoon appropriately withhold information it identified as non-responsive to the Applicant's request?

[9] The *IPC Guide to Exemptions* provides the following guidance on the application of Records Not Responsive:

When a public body receives an access to information request, it must determine what information is responsive to the access request.

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".

When determining what information is responsive, consider the following:

- The request itself sets out the boundaries of relevancy and circumscribes the records of information that will ultimately be identified as being responsive.
- A public body can remove information as not-responsive only if the applicant has requested specific information, such as his or her own personal information.
- The public body may treat portions of a record as not-responsive if they are clearly separate and distinct and entirely unrelated to the access request. However, use it sparingly and only where necessary.
- If it is just as easy to release the information as it is to claim "not responsive", the information should be released (i.e. releasing the information will not involve time consuming consultations nor considerable time weighing discretionary exemptions).
- ...
- Avoid breaking up the follow of information (i.e. if possible, do not claim "not responsive" within sentences or paragraphs).
- In the section 7 response to the applicant, the public body should explain what "not responsive" means and that some information has been redacted on this basis.

[10] The City redacted a portion of page 14 of the record labelling it as non-responsive. In its submission, the City indicated the information did not relate to the dog involved in the incident. My office does suggest for small portions of non-responsive material that a local authority consider releasing it, provided it doesn't contain personal information.

[11] Based on my review of the portion of page 14, the City said was not responsive to the Applicant's request, I agree with the City's finding. As such, I find that the City appropriately withheld this information.

2. Does subsection 28(1) of LA FOIP apply to the record?

[12] Subsection 28(1) of LA FOIP provides:

28(1) No local authority shall disclose personal information in the 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.

[13] If the information in the record has been identified as personal information, section 28 of LA FOIP provides there must be authority under LA FOIP to release it. Releasing personal information without authority would constitute a privacy breach.

[14] Subsection 23(1) of LA FOIP provides a list of examples of what would qualify as personal information. However, this list is not meant to be exhaustive. There can be other types of information that would qualify as personal information that are not listed. Part of that consideration involves assessing if the information has both of the following:

1. Is there an identifiable individual?
2. Is the information personal in nature?

[15] In its submission, the City provided that some of the personal information it severed from the record was straightforward, as the information clearly fit the definition of personal information as defined in subsection 23(1) of LA FOIP. However, other information, such

as images and narrative details, the City relied on guidance from the *IPC Guide to Exemptions* and consideration of the test outlined above.

[16] Some of the severed information on pages 1 – 4 and 14 in the record includes the following information about the dog owner: first and last name, telephone number, date of birth, driver's license number, street address and postal code. The severed information on page 14 also includes the first and last name of an individual at the same address as the dog owner and a number the City had assigned to the individual for the purposes of animal licensing.

[17] The information listed above clearly fits the definition of personal information provided in subsections 23(1)(d), (e) and (k)(i) of LA FOIP. As this information does not relate to the Applicant, I find that the City appropriately withheld this information pursuant to subsection 28(1) of LA FOIP.

[18] Other information the City withheld claiming it would reveal the dog owner's personal information includes portions of the record that describe the property, photos of the property, photos of the dog involved in the incident with the dog owner and photos of a vehicle showing a license plate.

[19] The City found it imperative to withhold details that described the owner's property, as well as portions of photos of the property, photos of the owner and photos of the dog involved in the incident. This was due to the City's concern that the Applicant may be able to link details she believes to be true with the withheld portions of the record and would lead to an accurate inference of the identity of an individual.

[20] In an August 14, 2017 letter the Applicant had submitted to the City, the Applicant provides her account of the incident. In this letter, the Applicant also provides a description of the dog involved in the incident, a description of the dog owner, a description of the dog owner's vehicle, her recollection of the first name of the owner, her belief that the owner resides on the same street as her and a telephone number the Applicant recorded from her call display that she believes may belong to the dog owner. In this same letter, the

Applicant indicated she had attempted to locate the owner by walking the vicinity to find the dog owner's vehicle or the dog involved in the incident in order to locate the dog owner.

1. Is there an identifiable individual?

[21] The *IPC Guide to Exemptions* provides the following regarding the definition of an identifiable individual:

Identifiable individual means that it must be reasonable to expect that an individual may be identified if the information were disclosed. The information must reasonably be capable of identifying particular individuals because it either directly identifies a person or enables an accurate inference to be made as to their identity when combined with other available sources of information (data linking) or due to the context of the information in the record.

Use of the term "individual" in this provision makes it clear that the protection provided relates only to natural persons.

i. Descriptions & photos of the property

[22] The descriptions of the property on pages 1, 2 and 4 of the record include the type of wood used for the fence, type of material used for a gate, the location of the gates on the property, location of the garage on the property and identifies public areas near the owner's property.

[23] The photos of the property on pages 16 – 30 of the record include images of the fence, gate, items in the yard, buildings/structures on the property and trees and plants on the property and surrounding the property.

[24] *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2015 ABQB 246, considered Alberta Information and Privacy Commissioner Order F2013-53 regarding its determination that information relating to complaints relating the Applicant's property constituted personal information. This Decision provided the following:

[58] In *Leon's Furniture* [*Leon's Furniture Limited v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94], Justice Slatter correctly observed that for information to count as "personal information," the information must be about an "identifiable" individual – if information is about persons but cannot be linked to an identifiable

person (as in the case of aggregated and anonymized statistical information) it is not “personal information:” at para 47. In addition, “personal information” must have a “precise connection” to an individual. Justice Slatter elaborated at para 48: Further to be “personal” in any reasonable sense the information must be directly related to the individual; the definition does not cover indirect or collateral information. Information that relates to an object or property does not become information “about” an individual, just because some individual may own or use that property. Since virtually every object or property is connected in some way with an individual, that approach would make all identifiers “personal” identifiers. In the context of the statute, and given the purposes of the statute set out in s. 3, it is not reasonable to expand the meaning of “about an individual” to include reference to objects that might indirectly be affiliated or associated with individuals...

[59] The City’s error was to read Justice Slatter as having said something like “[i]nformation that relates to an object or property cannot become information ‘about’ an individual, even if some individual may own or use that property.” The City seems to have incorrectly assumed that that “[j]ust because information that is identifying is personal information... all non-identifying information is not [personal information]” Peter Choate & Associates Ltd v Dahlseide, 2014 ABQB 117 (CanLII), Jeffrey J at para 58. Personal information is not just identifying information but information which an individual is identifiable...

[60] Justice Slatter’s observation that “[i]nformation that relates to an object or property does not become information ‘about’ an individual, just because some individual may own or use that property” is true. But equally, information that relates to an object or property is not precluded from being information ‘about’ an individual, just because some individual may own or use that property. Justice Slatter used the words “just because:” the fact that property is owned or used is neither necessary nor sufficient information about the property to be information about the owner or user. Not all information about property is information about owners. Not all information about owner’s information about property. But some information that relates to property may also be information about an individual. Whether that is so will depend on facts in addition to mere ownership or use – information about an object is not personal information about an individual just because it relates to the individual that owns the property. The determination of whether information relates to property also relates to an individual will depend on further facts – that is to say, on context.

[25] Further, in PIPEDA Case Summary #349, the Privacy Commissioner of Canada found that photographs of tenants’ apartments contained information of a personal nature:

For example, she noted that, while the purpose of a particular photograph might be to show the state of the walls or the condition of a kitchen or bathroom of a certain unit, it also revealed information about the unit dweller and his or her standard of living. It might show whether they are tidy or not, whether they can afford expensive media equipment or not, whether they love music, or art, or cooking. Under section 2, personal information is defined as information about an identifiable individual. She

noted that it states only that the individual must be “identifiable,” not necessarily identified...

- [26] If the City was to release this information to the Applicant, it is reasonable to expect the Applicant may be able to identify an individual based on the individual’s location.

ii. Photos of the dog involved in the incident and dog owner

- [27] The photos on pages 31 – 35 of the record show the dog involved in the incident on a leash held by the dog’s owner. The image of the owner in these photos is from the waist down.

- [28] In Ontario Information and Privacy Commissioner (Ontario IPC) Order MO-2712, the public body had refused access to dog licensing information for two named individuals. In this order, it found the following regarding information about a dog owned by an individual would qualify as personal information:

The information contained in the records requested by the appellant consists of the full names of the affected parties, their address and information about the licensing of their dogs. The appellant has narrowed her request to certain information about the dogs identified in the records. However, it is clear, from the context of her request, that she is seeking information pertaining to the affected parties, who she specifically named in her request. I am satisfied that the records contain personal information within the meaning of that term as defined above, and in particular, sections 2(d) and (h), as they contain specific information about dogs owned by the affected parties. Moreover, I find that the records contain only the personal information of individuals other than the appellant.

- [29] The City has released details about the dog’s breed as well as the name of the dog to the Applicant. It is reasonable to expect that the dog owner could be identified with the release of this information as the photos may provide markings distinctive to the dog owner’s dog and therefore lead to the identification of the dog owner.

- [30] Ontario IPC Order MO-3358 discussed images of an individual requested by an Applicant and discusses past orders on similar information. The Order provides as follows:

[36] Previous orders have determined that in order to qualify as “personal information”, the fundamental requirement is that the information must be “about an identifiable individual” and not simply associated with an individual by name or other identifier.

...

[39] ... this office has previously held that information collected about identifiable individuals from video surveillance cameras qualifies as “personal information” under the Act. In that regard, I find that disclosing an individual’s unblurred image on CCTV camera footage... would also reveal their personal characteristics and that they were present in that place on that date, and their conduct as well as their location and movement at certain times...

...

[43] ... individuals may have certain attributes that would result in a reasonable expectation that they could be identifiable even with the application of blurring technology. A starting point could be section 2(1)(a) of the definition of personal information which provides that personal information includes:

information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual.

[44] Other considerations may also apply. Some orders have considered a small cell count, where the possibility of identification increases based on the number of possible affected parties. The question then is whether it is reasonable to expect that an individual could be identified because of the size of the group of individuals, the nature of the information at issue, or when the information at issue is combined with information from sources otherwise available.

[45] Other orders have found that, even if the images are unclear or the faces have been blurred, there may be something distinctive about an individual that would allow them to be identifiable. It may be that the individual’s attire would set them apart from others on the scene, such as individuals wearing a particular uniform or type of clothing. It may be that with facial blurring, they remain distinctive and therefore identifiable. Still other orders have found that individuals are not identifiable because the images are unclear on the video camera footage or because, in the circumstances, the images render the individual unidentifiable.

[31] Although the photos at issue are not blurred and simply redacted, the same considerations for releasing the images in full can be considered. Although the dog owner’s face is not part of the image in these photos, if the City was to release this information to the Applicant, it is reasonable to expect the Applicant may be able to identify an individual based on the number of individuals in the location.

iii. Photo of a vehicle and licence plate

[32] The photos on pages 16 and 17 include images of the rear of a vehicle, including the model of the vehicle, a decal on the rear windshield, and the license plate.

[33] If the City was to release this information to the Applicant, it is reasonable to expect the Applicant may be able to identify an individual based on the dog owner's location.

2. Is the information personal in nature?

[34] The term 'personal in nature' is defined in the *IPC Guide to Exemptions* as follows:

Personal in nature means that the information reveals something personal about the individual. Information that relates to an individual in a professional, official or business capacity could only qualify if the information revealed something personal about the individual for example, information that fits the definition of employment history.

[35] Should the City reveal the descriptions of the property and photos associated with this incident, it is reasonable to expect the Applicant could determine the name and address of the dog owner. As such, I find that this information would reveal information of a personal nature.

[36] I find that the City has appropriately applied subsection 28(1) of LA FOIP to the withheld portions of the record.

IV FINDINGS

[37] I find the City has appropriately identified withheld portions of the record as non-responsive to the Applicant's access to information request.

[38] I find the City has appropriately applied subsection 28(1) of LA FOIP to the withheld portions of the record.

V RECOMMENDATION

[39] I recommend the City continue to withhold the severed portions of the record.

Dated at Regina, in the Province of Saskatchewan, this 7th day of February, 2018.

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