



REVIEW REPORT 267-2017, 268-2017, 269-2017, and 270-2017

City of Regina

February 21, 2018

Summary: The City of Regina (the City) received an access to information request. It notified third parties of the request. The third parties objected to the release of the records. The third parties requested a review by the Information and Privacy Commissioner (IPC). The IPC recommended that the City withhold some information pursuant to subsection 18(1)(b) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) but release the remainder.

I BACKGROUND

[1] An individual submitted the following access to information request to the City of Regina (City):

“I am looking for a summary of trip data, relating to 2015 & 2016 (see below). If possible a break down per taxi broker.

I respectfully request the following information collected and held by City of Regina under section 24.2.1(a)(b)(c) of the Taxi By-Law.

Monthly summary for the years 2015 & 2016:

1. Monday – Friday between the hours of 7:30am – 5:30pm & 5:30pm – 7:30 am.
 - Number of trips dispatched & non dispatched
 - Average duration of each trip
 - Average length of time between call received & call pickup
 - Number of dispatched call cancellations
 - The number of service vehicles on
2. Saturday – Sunday, between the hours of 7:30am – 5:30pm & 5:30pm – 7:30am
 - Number of trips dispatched & non dispatched

- Average duration of each trip
- Average length of time between call received & call pickup
- Number of dispatched call cancellations
- The number of service vehicles on

3. The total number of regular taxi decals & total number of season taxi decals for 2015.”

[2] The City identified some of the responsive records to contain information described in subsection 18(1) of LA FOIP. Therefore, in letters dated September 14, 2017, the City notified the third parties of the access to information request pursuant to section 33 of LA FOIP. It described the records as the quarterly trip data submissions for 2015 and 2016 submitted by third parties as the records that are at issue. It invited the third parties to provide representations as to why access to the records or part of the records should not be given.

[3] The third parties objected to the City releasing the two records.

[4] In letters dated October 11, 2017 to the third parties, the City gave written notice that it has made a decision to release some of the information in the records to the Applicant. The letters also advised the third parties that they are entitled to request a review by my office.

[5] The third parties requested a review by my office.

[6] On November 3, 2017, my office notified each of the third parties and the City of Regina that it would be undertaking reviews.

A description of the third parties

[7] The third parties are four taxi brokers. Two of the four taxi brokers are represented by one lawyer. Therefore, I will refer to these two taxi brokers as Taxi Brokers A+B. The other two taxi brokers report information to the City under one name. Therefore, I will refer to these two taxi brokers as Taxi Brokers C+D.

II RECORDS AT ISSUE

[8] At issue are two records.

First record

[9] The first record is a Microsoft Excel spreadsheet entitled “Taxi Trips per Broker”. It is comprised of five sheets:

- Appendix A - Average Wait Times (Dispatch Trips Only) (Monthly Report)
- Appendix B - Average Wait Times (Dispatch Trips Only) (Weekly Report)
- Appendix C - Number of Vehicles in Service (Monthly Report)
- Appendix D - Number of Vehicles in Service (Weekly Report)
- Appendix E - Total Number of Regular Taxi Decals & Seasonal Decals

[10] Taxi brokers report the above information to the City pursuant to *The Taxi Bylaw, 1994*. The City recorded the information into Appendices A, B, C, and D of the spreadsheet. The City redacted the information it recorded into the body of the spreadsheet pursuant to subsections 18(1)(b) and 18(1)(c) of LA FOIP. The names of the columns and rows were not redacted by the City and are not at issue in this review.

Second record

[11] The second record is a Microsoft Excel spreadsheet entitled “Taxi Trips Aggregated”. It is comprised of the same five sheets except the information in Appendix A, Appendix B, Appendix C, and Appendix D is an aggregate of the four taxi brokers’ information. The City’s position is that this second record could be released in its entirety to the Applicant because the information in aggregate form would not disclose information that was confidentially supplied by the third parties.

Appendix E in both records

[12] Appendix E in the first record is the duplicate of Appendix E of the second record.

III DISCUSSION OF THE ISSUES

[13] The City is a local authority as defined by subsection 2(f) of LA FOIP.

[14] I will begin the analysis by determining if subsection 18(1)(b) of FOIP applies to the information supplied in the first record. If it does, then I will have to determine if the aggregated form of the information, as it appears in the second record, would still disclose third party information.

1. Does subsection 18(1)(b) of LA FOIP apply to the first record?

[15] As noted in the background section of this report, the City withheld the information in Appendices A, B, C, and D of the first record pursuant to subsection 18(1)(b) of LA FOIP. Each of the third parties agree with the City's application of subsection 18(1)(b) of LA FOIP to these appendices. However, my office must make a finding that subsection 18(1)(b) of LA FOIP applies to these appendices before it determines that the aggregate form of the information in these appendices could reveal third party information.

[16] In order for subsection 18(1)(b) of LA FOIP to apply, all three parts of the following test must be met:

1. Is the information financial, commercial, scientific, technical or labour relations information?
2. Was the information supplied by the third party to a public body?
3. Was the information supplied in confidence implicitly or explicitly?

[17] Below is an analysis to determine whether the three-part test is met:

a. Is the information financial, commercial, scientific, technical or labour relations information?

[18] Both the City and the third parties asserted the information in the appendices qualify as "commercial information". Commercial information is information relating to the buying,

selling or exchange of merchandise or services. The information in the first record, such as the average wait times and the number of vehicles in service of each third party, relates to the operation of service that is of a commercial nature. I find that the information in Appendices A, B, C, and D of the first record qualifies as commercial information.

[19] Appendix E has information about the number of regular, temporary, and seasonal decals that are issued by the City to each broker. Appendix E also includes the fleet size of each taxi broker (the fleet size is calculated by adding the number of regular decals to temporary decals). The information recorded in Appendix E relates to the operation of a service that is of a commercial nature. I find that the information in Appendix E qualifies as commercial information.

b. Was the information supplied by the third party to a public body?

[20] In order for information to have been supplied by the third party, the information must not have been created or generated by the local authority. An example is that an inspector visiting a site and making observations would not qualify as information supplied by a third party.

[21] In this case, I find that the information in Appendices A, B, C, and D of the first record is information that was supplied by the third parties to the City. It is information that section 24.2 of *The Taxi Bylaw, 1994* requires taxi brokers to submit to the City.

[22] However, I find that the information in Appendix E, which is the number of decals issued by the City to each taxi broker, is not supplied by the third parties to the City. As such, I find that the second part of the test is not met for the information in Appendix E so subsection 18(1)(b) of LA FOIP does not apply to Appendix E of both records. I will proceed to analyze whether the third part of the test is met for Appendices A, B, C, and D of the first record.

c. Was the information supplied in confidence implicitly or explicitly?

[23] In its submission, the City asserts there is a mutual expectation between it and each taxi broker that information in Appendices A, B, C, and D of the first record was supplied by each taxi broker in confidence. This assertion is supported by the lawyer representing Taxi Brokers A+B. He indicated that the City's licensing department had assured the brokers that the information submitted pursuant to the bylaw would remain confidential and would not be shared publicly or with other brokers, at a industry meeting in 2013. Finally, Taxi Brokers C+D asserted that its understanding was the City would maintain the information confidentially.

[24] Based on the above, I find it is likely there was a mutual understanding between the City and the third parties that the information in Appendices A, B, C, and D of the first record was supplied in confidence. I find that subsection 18(1)(b) of LA FOIP applies to Appendices A, B, C, and D of the first record because all three parts of the test were met.

2. Does subsection 18(1)(b) of LA FOIP apply to the second record?

[25] I must determine if subsection 18(1)(b) of LA FOIP applies to Appendices A, B, C, and D of the second record. As mentioned earlier, these appendices in the second record contain the same information as in the first record but in aggregate form.

[26] As already laid out earlier, in order for subsection 18(1)(b) of LA FOIP to apply, all three parts of the following test must be met:

1. Is the information financial, commercial, scientific, technical or labour relations information?
2. Was the information supplied by the third party to a public body?
3. Was the information supplied in confidence implicitly or explicitly?

[27] Below is an analysis to determine whether the three-part test is met:

a. Is the information financial, commercial, scientific, technical or labour relations information?

[28] At paragraph [18], I found that the information in Appendices A, B, C, and D of the first record qualify as commercial information. In the second record, I find that the information, in aggregate form, still qualifies as commercial information as the information relates to the operation of a service that is of a commercial nature.

b. Was the information supplied by the third party to a public body?

[29] The taxi brokers did not get together and aggregate their data prior to supplying their information to the City. Each taxi broker reported their own information to the City, and then the City aggregated the data. The City argues that since the information in Appendices A, B, C, and D has been aggregated, the information is no longer attributable to individual taxi brokers. In contrast, the third parties assert that due to the low number of taxi brokers in the City, the aggregated information can easily be broken down to individual taxi brokers. Since there is a low number of taxi brokers, the lawyer representing Taxi Brokers A+B argues that the aggregated data is heavily weighted by the data of each individual broker. Since Taxi Broker C+D reports information as one organization, then the aggregate data is formed by information reported by three organizations. If a couple of the taxi brokers cooperated and shared information, and used the aggregate data, then the information of the third non-cooperating taxi broker could be determined. The lawyer for Taxi Broker A+B offered the following mathematical equation to illustrate his point: $\text{Aggregate data} = \text{Broker1} + \text{Broker2} + \text{Broker3}$. The variable "Broker 3", which could represent the non-cooperating taxi broker, could be determined as follows: $\text{Broker3} = \text{Aggregate data} - (\text{Broker1} + \text{Broker2})$.

[30] I agree with the third parties. A low number of taxi brokers means that the aggregated information could be easily de-aggregated into its component parts. While there would be some barriers to breaking down the information, such as one taxi broker seeking the cooperation of another taxi broker, it is not an overly difficult task to accomplish. Since

the aggregate information can be easily de-aggregated, I find that the information at issue is information supplied by the third parties to the City.

c. Was the information supplied in confidence implicitly or explicitly?

[31] My office shared the draft version of this report to the City on January 22, 2018. It responded to my office by asserting that it never assured the third parties that the aggregate data in the second record would be kept in confidence. The City asserted that its intention was always to use the aggregated data to make regulatory decisions. Since it is City Council that makes regulatory decisions, and since City Council must make decisions in public, then it has always anticipated that the aggregate data would be disclosed in a public forum. Because of this, it has never conveyed to the third parties that the aggregate data in the second record would be kept confidential.

[32] At paragraph [24], I found that there was an implicit mutual understanding that the information reported by each individual taxi broker to the City was supplied implicitly in confidence. Therefore, I must determine if the City has taken sufficient steps to protect the confidentiality of the information prior to reporting aggregate information in a public forum.

i. Has the City demonstrated that it has taken sufficient steps to protect the confidentiality of the information?

[33] When public bodies report aggregate data, it must take steps to ensure that it does not breach the confidentiality of information. In this case, the City should be demonstrating how it is maintaining the confidentiality of the information reported to it by individual taxi brokers.

[34] The City's position is that by aggregating the information, the information is no longer attributable to individual taxi brokers. However, the single act of aggregating information may not be sufficient, especially if there is a low number of organizations reporting information. The "cell size of five" rule is a practice of releasing aggregate data about individuals only if the number of individuals counted for each cell of the table is greater

than or equal to five. I acknowledge that the information in the second record is not about individuals but about four taxi brokers. However, this rule still suggests that the single act of aggregating information reported by four taxi brokers – a very low number - may not be sufficient in itself to protect the confidentiality of the information.

[35] I find that the City has not demonstrated that it has taken sufficient steps to protect the confidentiality of the aggregated information. Therefore, since the aggregated data can be easily de-aggregated into its component parts, and since I found there is a mutual implicit understanding between the City and the third parties that information reported by each individual taxi broker is confidential, I find that the information was supplied in confidence. I find that subsection 18(1)(b) of LA FOIP applies to the information in the body of the spreadsheet in Appendices A, B, C, and D of the second record.

[36] In response to my office's draft version of this report, the City disagreed with my office's finding that subsection 18(1)(b) of LA FOIP applies to the body of Appendices A, B, C, and D in the second record. It stated the following:

The City would appreciate an understanding of whether the IPC intends its finding to limit the City's ability to use the information for the purpose for which it was provided, i.e. to report it back to Council in a public meeting for the purposes of enabling Council to make regulatory and policy changes based on the data.

[37] I note that subsection 94(1) of *The Cities Act* requires that all council meetings be conducted in public. However, subsection 94(2) of *The Cities Act* provides that councils and council committees may close all or part of their meetings to the public if the matter to be discussed is within one of the exemptions in Part III of LA FOIP. It provides:

94(2) Councils and council committees may close all or part of their meetings to the public if the matter to be discussed is within one of the exemptions in Part III of *The Local Authority Freedom of Information and Protection of Privacy Act*.

[38] Further, I note that subsection 65(e) of *The Cities Act* provides that councillors are to keep matters discussed in private or to be discussed in private at a council or council committee meeting until discussed at a meeting held in public. It provides:

65 Councillors have the following duties:

...

(e) subject to the bylaws made pursuant to section 55.1, to keep in confidence matters discussed in private or to be discussed in private at a council or council committee meeting until discussed at a meeting held in public;

[39] Therefore, since councillors must keep matters confidential until they are discussed at a meeting held in public, information supplied by the third parties can still be provided to councillors so they are informed prior to making decisions.

[40] Based on both subsections 65(e) and 94(2) of *The Cities Act*, the City is still able to use the information to make regulatory and policy decisions and maintain confidentiality to the extent necessary.

[41] As noted at paragraph [23], the City asserted there is a mutual expectation between it and each taxi broker that information in Appendices A, B, C, and D of the first record was supplied by each taxi broker in confidence. It is possible that the City communicate to all concerned that this type of information will not be kept in confidence in the future and will in fact be disclosed the public in the future.

[42] I commend the City's desire to be transparent. One of the purposes of LA FOIP is to ensure transparency and accountability of local authorities. While third parties cannot expect absolute confidentiality when it is interacting with local authorities, third parties should be able to expect that information that qualifies for exemption pursuant to section 18 of LA FOIP to remain confidential in many cases. I recommend that the City strike a balance between its transparency obligations under LA FOIP and protecting the confidentiality of information that qualifies for exemption pursuant to section 18 of LA FOIP.

3. Does subsection 18(1)(c) of LA FOIP apply to Appendix E of the first and second record?

[43] Since I have already found that subsection 18(1)(b) of LA FOIP applies to Appendices A, B, C, and D of both the first and second record, I do not have to determine if subsection 18(1)(c) of LA FOIP applies to those appendices of each record. However, I must determine if subsection 18(1)(c) of LA FOIP applies to Appendix E of both records. As

already noted, Appendix E in the first record is a duplicate of Appendix E in the second record. Appendix E details the number of decals the City issues to each taxi broker.

[44] The City did not apply subsection 18(1)(c) of LA FOIP to Appendix E. However, Taxi Broker C+D asserts that subsection 18(1)(c) of LA FOIP applies to Appendix E of both records and should be withheld.

[45] Subsection 18(1)(c) of LA FOIP provides as follows:

18(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(c) information, the disclosure of which could reasonably be expected to:

- (i) result in financial loss or gain to;
- (ii) prejudice the competitive position of; or
- (iii) interfere with the contractual or other negotiations of;

a third party;

[46] For any of the subsections above to apply, all three parts of the following test must be met:

1. Is there a clear cause and effect relationship between the disclosure and the harm which is alleged?
2. Is the harm caused by the disclosure more than trivial or inconsequential?
3. Is the likelihood of the harm genuine and conceivable?

[47] A summary of Taxi Broker C+D's arguments are as follows:

- Disclosing the number of decals issued by the City would reveal the fleet size of each taxi broker. It is not aware that this type of information is public and up until this review, it has not been advised by the City that it has ever treated this information as public. It asserts this information is commercial information and the disclosure of this information can prejudice the competitive position of the taxi brokers.
- The knowledge of the fleet size of each taxi broker (or the number of decals issued to each taxi broker) could be used to interfere with contractual matters or negotiations with large volume taxi users and result in financial loss to a taxicab broker and taxi cab license owners affiliated with it.

- The combination of the aggregated data in the second record plus the fleet size (or the number of decals issued to each taxi broker by the City) could reveal information that competitors could use to its advantage, such as each taxi broker's market share, daily trip volumes by each broker, the value of an average taxi trip, and the earning capabilities for each taxi broker.
 - Taxi Broker C+D cite that competitors could be from taxi brokers within the taxi industry or industries that compete with taxi brokers on different platforms (such as ride-sharing companies).

[48] I have considered the above arguments and I find that the harms test described at paragraph [42] is not met for the following reasons:

- Merely asserting harm is not sufficient in meeting the harms test. Particularity in describing the harm is needed to support the application of subsection 18(1)(c) of LA FOIP to records at issue. Taxi Brokers C+D asserted that the disclosure of the number of decals issued by the City to each taxi broker could prejudice the competitive position of the taxi brokers or that it could interfere with contractual matters or negotiations with large volume taxi users and result in financial loss is not sufficient for my office to find that the harm is genuine and conceivable.
- I have already found that the aggregate information in Appendices A, B, C, and D of the second record should be withheld from disclosure pursuant to subsection 18(1)(b) of LA FOIP. Therefore, the harm resulting from combining the aggregated data and the number of decals issued by the City is not likely.

[49] I also note that one of the purposes of LA FOIP is to enable the public to scrutinize decisions made by local authorities such as the City. In this case, there is a limited number of decals that are issued to taxi brokers by the City. Access to such information enables the public to scrutinize decisions made by the City regarding how many decals are distributed.

[50] I find that subsection 18(1)(c) of LA FOIP does not apply to Appendix E in both records.

IV FINDINGS

[51] I find that the information in Appendices A, B, C, and D of the first record qualify as commercial information.

- [52] I find that the information in Appendix E qualifies as commercial information.
- [53] I find that the information in Appendices A, B, C, and D of the first record is information that was supplied by the third parties to the City.
- [54] I find that the information in Appendix E, which is the number of decals issued by the City to each taxi broker, is not supplied by the third parties to the City.
- [55] I find that the second part of the three-part test for subsection 18(1)(b) of LA FOIP is not met for the information in Appendix E so subsection 18(1)(b) of LA FOIP does not apply to Appendix E in both records.
- [56] I find it is likely there was a mutual understanding between the City and the third parties that the information in Appendices A, B, C, and D of the first record was supplied in confidence.
- [57] I find that subsection 18(1)(b) of LA FOIP applies to Appendices A, B, C, and D of the first record because all three parts of the test were met.
- [58] I find that the information, in aggregate form, in Appendices A, B, C, and D of the second record qualifies as commercial information as the information relates to the operation of a service that is of a commercial nature.
- [59] I find that the information in Appendices A, B, C, and D of the second record is information supplied by the third parties to the City since the aggregate information can easily be de-aggregated.
- [60] I find that the information is supplied in confidence by the third parties to the City.
- [61] I find that the City has not demonstrated that it has taken sufficient steps to protect the confidentiality of the aggregated information.

[62] I find that subsection 18(1)(b) of LA FOIP applies to the information in the body of the spreadsheet in Appendices A, B, C, and D of the second record.

[63] I find that subsection 18(1)(c) of LA FOIP does not apply to Appendix E in both records.

V RECOMMENDATIONS

[64] I recommend that the City withhold the bodies of the spreadsheets in Appendices A, B, C, and D of both records from disclosure pursuant to subsection 18(1)(b) of LA FOIP.

[65] I recommend that the City release Appendix E of both records.

Dated at Regina, in the Province of Saskatchewan, this 21st day of February, 2018.

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