



REVIEW REPORT 326-2019

Rural Municipality of Maple Creek No. 111

June 2, 2020

Summary: The Rural Municipality of Maple Creek No. 111 (the R.M.) received an access to information request for a letter from an Applicant. The R.M. withheld the letter pursuant to subsection 13(1)(b) of *The Local Authority Freedom of Information and Protection of Privacy Act*. The Commissioner found that the exemption did not apply and recommended release of the record.

I BACKGROUND

[1] The Rural Municipality of Maple Creek No. 111 (the R.M.) received an access to information request, dated August 20, 2019, for the following:

- A copy of the public prosecutor response letter as noted in the March 18, 2018 minutes;
- Accounts payable list for August 2018 to March 2019.

[2] The R.M. responded to the Applicant's access request on September 19, 2019. The Applicant was dissatisfied with the R.M.'s response and, on October 24, 2019, contacted my office.

[3] As a result of early resolution efforts by my office, the R.M. provided the Applicant with records responsive to the second part of the Applicant's request. Additionally, on October 25, 2019, the R.M. also provided the Applicant with a second, more compliant response to

the Applicant's access to information request. The R.M. indicated that it was withholding records responsive to the first access request pursuant to subsections 13(1)(a) and (b) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[4] On October 28, 2019, the Applicant asked that my office review the R.M.'s application of subsections 13(1)(a) and (b) of LA FOIP. On October 28, 2019, my office notified both the R.M. and the Applicant of my intention to undertake a review.

II RECORDS AT ISSUE

[5] The R.M. is withholding one record that is one page in length. Initially, it applied both subsections 13(1)(a) and (b) of LA FOIP to the entire record. Later in this review, the R.M. indicated it was only relying on subsection 13(1)(b) of LA FOIP to withhold the record.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to conduct this review?

[6] The R.M. is a "local authority" pursuant to subsection 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

2. Does subsection 13(1)(b) of LA FOIP apply to the record?

[7] Subsection 13(1)(b) of LA FOIP provides:

13(1) A head shall refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from:

...

(b) the Government of Saskatchewan or a government institution;

...

unless the government or institution from which the information was obtained consents to the disclosure or makes the information public.

[8] The R.M. has applied subsection 13(1)(b) of LA FOIP to the entire record.

[9] Section 13 of LA FOIP is a mandatory exemption, which means that the head of the local authority is obligated to withhold information where it thinks the exemption may apply. Section 13 of LA FOIP allows local authorities to withhold information that it obtained in confidence from other governments, which are listed in its subsections, in this case, the Government of Saskatchewan or government institutions.

[10] The following test can be applied to determine if subsection 13(1)(b) of LA FOIP applies:

1. Was the information obtained from the Government of Saskatchewan or a government institution?
2. Was the information obtained implicitly or explicitly in confidence?

1. Was the information obtained from the Government of Saskatchewan or a government institution?

[11] The R.M. submitted that the information in the record was obtained from the Government of Saskatchewan and in particular, the Ministry of Justice. The record is a one page letter from an Assistant Deputy Attorney General in the Public Prosecutions Branch of the Ministry of Justice.

[12] Subsection 2(d) of LA FOIP defines “government institution” as follows:

2 In this Act:

...

(d) “**government institution**” means a government institution as defined in *The Freedom of Information and Protection of Privacy Act*;

[13] The Ministry of Justice qualifies as a government institution pursuant to subsection 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Therefore, it also qualifies as a government institution pursuant to subsection 2(d) of LA FOIP.

[14] The first part of the test has been met.

2. Was the information obtained implicitly or explicitly in confidence?

- [15] In its submission, the R.M. did not address how the information in question was obtained in confidence or, specifically, if it was obtained implicitly or explicitly in confidence. On May 15, 2020, my office provided guidance to the R.M. about factors that are taken in to account when determining if information was obtained implicitly or explicitly in confidence and asked that it provide more information about how the information was obtained in confidence.
- [16] In reply, the R.M. provided my office with written advice that it received from its legal counsel regarding the application of subsection 13(1)(b) of LA FOIP to the record. Neither the R.M. nor the written legal advice specifically addressed how the information was obtained in confidence.
- [17] After receiving a draft of this Report, the R.M. indicated that the word “confidential” was stamped on the envelope in which the letter was sent. My office’s *Guide to FOIP, Chapter 4* (updated February 4, 2020) at page 21 indicates that simply labelling documents as “confidential” does not, on its own, make the documents confidential (i.e. confidentiality stamps or standard automatic confidentiality statements at the end of emails). This is just one factor that we consider when determining whether the information was explicitly supplied in confidence when interpreting *The Freedom of Information and Protection of Privacy Act* (FOIP). This also applies when considering subsection 13(1)(b) of LA FOIP.
- [18] The Applicant alleged that the letter was discussed at an R.M. council meeting under the general correspondence portion of the meeting. The Applicant submitted that any members of the public present at the meeting would have learned about the letter.
- [19] The R.M. confirmed that the council had acknowledged receiving the letter by resolution of council at a R.M. council meeting outside of a “closed session”.
- [20] The R.M. has not demonstrated how the information in question was obtained implicitly or explicitly in confidence. Further, the information was acknowledged at a public meeting

of the R.M.'s council. I am not persuaded that the information in question was obtained implicitly or explicitly in confidence. The second part of the test is not met.

[21] I find that subsection 13(1)(b) of LA FOIP does not apply to the record.

IV FINDING

[22] I find that subsection 13(1)(b) of LA FOIP does not apply to the record.

V RECOMMENDATION

[23] I recommend that the R.M. release the record to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 2nd day of June, 2020.

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