



## **REVIEW REPORT 353-2019**

### **Saskatoon Police Service**

**November 18, 2020**

#### **Summary:**

The Applicant made an access to information request to the Saskatoon Police Service (SPS) for information on themselves. SPS denied access to parts of the records pursuant to subsections 14(1)(j), (k), 16(1)(b) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). SPS later dropped its reliance on subsection 14(1)(k) of LA FOIP, providing additional access to information to the Applicant. The Commissioner found that SPS properly applied subsections 14(1)(j), 16(1)(b) and 28(1) of LA FOIP to the records, and recommended it continue to withhold information pursuant to those subsections of LA FOIP. The Commissioner also found that SPS conducted an adequate search for records.

#### **I BACKGROUND**

[1] On July 27, 2018, the Saskatoon Police Service (SPS) received the following access to information request from the Applicant:

Would request any and all information on myself.

[2] On October 22, 2018, the Applicant narrowed their request to “compiled list of events taken from phone and security camera records” with the timeframe, “2014 – to current date 2018”.

[3] On November 6, 2018, SPS provided a list of responsive records to the Applicant and sought further clarification on some records the Applicant appeared to have been

requesting. From November 7, 2018 to November 14, 2018, the SPS had the Applicant further clarify their access to information request.

[4] On December 19, 2019, SPS provided the Applicant with its section 7 response and responsive records. SPS stated it was withholding portions of the records pursuant to subsections 14(1)(j), (k), 16(1)(b) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[5] On November 19, 2019, my office received a request for review from the Applicant.

[6] On December 11, 2019, my office provided notification to SPS and the Applicant of my office's intent to undertake a review.

## II RECORDS AT ISSUE

[7] At issue are a total of 86 pages of records, broken down into the following modified index of records, indicating where SPS has withheld information from the Applicant pursuant to LA FOIP:

<b>Record Group</b>	<b>Name of Record</b>	<b>Number of Pages</b>	<b>Subsection(s) of LA FOIP applied to the record</b>
1	CP 2011-101160	2	<ul style="list-style-type: none"> <li>Page 1 - 28(1)</li> </ul>
2	SP2-193 (Investigation Log)	1	<ul style="list-style-type: none"> <li>Page 1 - 14(1)(j)</li> </ul>
3	SP-1994-21050	14	<ul style="list-style-type: none"> <li>Pages 2, 3, 8, 9, 10 and 11–28(1)</li> </ul>
4	SP-2014-48771	17	<ul style="list-style-type: none"> <li>Page 14 – 14(1)(j)</li> <li>Pages 15 and 16 – 16(1)(b)</li> </ul>
5	SP-2015-61543	11	<ul style="list-style-type: none"> <li>Page 5 – 28(1)</li> </ul>

6	SP-2017-39269	13	<ul style="list-style-type: none"> <li>Pages 2 to 4, 6 to 8, 9, 12 – 28(1)</li> </ul>
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[8] In correspondence with the Applicant dated November 13, 2020, SPS stated it was dropping its reliance on subsection 14(1)(k) of LA FOIP and made a further release of records to the Applicant. As such, I will not consider subsection 14(1)(k) of LA FOIP in my analysis.

### III DISCUSSION OF THE ISSUES

#### 1. Do I have jurisdiction?

[9] 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. Did SPS properly apply subsection 28(1) of LA FOIP?

[10] 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.

[11] Subsection 28(1) of LA FOIP protects the privacy of individuals whose personal information may be contained within records responsive to an access to information request made by someone else. Subsection 28(1) of LA FOIP requires that the local authority have the consent of the individual whose information is in the record prior to disclosing it. Without consent, a local authority cannot release personal information unless one of the provisions at subsection 28(2) of LA FOIP apply.

[12] SPS applied subsection 28(1) of LA FOIP to the following pages in record groups 1, 3, 5 and 6:

- Record group 1, page 1 – to name, address and phone number of a third party;
- Record group 3, pages 2, 3, 8, 9, 10 and 11 – to name, address, sex, birthdate, phone number and criminal history of a third party;
- Record group 5, page 5 – to name and phone number of an individual employed by a painting company; and
- Record group 6, pages 2 to 4, 6 to 8, 9 and 12 – to names, sex, ethnicity, address, birthdate, driver’s licence and phone numbers of third parties.

[13] When dealing with information that is personal in nature, the first step for the local authority is to confirm the information in question qualifies as personal information pursuant to section 23 of LA FOIP. On the face of the records, I find that the pages in record groups 1, 3, 5 and 6 outlined at paragraph [12] contains the personal information of third parties, including: names, addresses, sex and ethnicity pursuant to subsection 23(1)(a) of LA FOIP; criminal history pursuant to subsection 23(1)(b) of LA FOIP; and birth date, phone number and an identifying number pursuant to subsections 23(1)(d) of LA FOIP. These subsections of LA FOIP provide 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;
- ...
- (d) any identifying number, symbol or other particular assigned to the individual;
- ...

[14] I recommend SPS continue to withhold the personal information as outlined at paragraph [12] of this Report pursuant to subsection 28(1) of LA FOIP.

### **3. Did SPS properly apply subsection 14(1)(j) of LA FOIP?**

[15] Subsection 14(1)(j) of LA FOIP provides as follows:

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

...

(j) facilitate the commission of an offence or tend to impede the detection of an offence;

[16] The test for subsection 14(1)(j) of LA FOIP, found in the *Guide to FOIP*, Chapter 4 (updated February 4, 2020) (Guide to FOIP) at page 71 is as follows. The local authority only needs to answer one of the following questions:

1. Could release of the record facilitate the commission of an offence?
2. Could release of the record tend to impede the detection of an offence?

[17] SPS applied subsection 14(1)(j) of LA FOIP to what it described as “dispatch codes” or “ten codes” on page 1 of record group 2, and page 17 of record group 4. In support of its reliance on subsection 14(1)(j) of LA FOIP, the SPS stated the following:

The IPC’s Guide to Exemptions provides that this provision permits a public body to refuse to disclose information that would be of use in committing a crime or impede the detection of a crime. The use of ten-codes by law enforcement personnel is used as a means of communication that conveys a specific message without publicly identifying its true meaning. In Saskatchewan, each police service maintains an individual list of ten-codes only used by one specific police service, with the exception of standardized ten-codes such as 10-4 (understood/message received).

...

With the objective of officer and public safety, the SPS has utilized encryption methods in order to protect radio transmissions from being intercepted. However, should these encryption methods be breached, the ten-codes would maintain a level of security over the communications of members.

[18] In Review Reports 037-2018 and 023-2019, 098-2019, also concerning SPS, my office found that disclosure of “ten codes” could facilitate the commission of an offence. Similar to the findings in those Review Reports, I find SPS properly applied subsection 14(1)(j) of LA FOIP to the ten codes that appear on page 1 of record group 2, and page 17 of record group 4. I recommend SPS continue to withhold the ten codes as they appear on page 1 of record group 2, and page 17 of record group 4 pursuant to subsection 14(1)(j) of LA FOIP.

**4. Did SPS properly apply subsection 16(1)(b) of LA FOIP?**

[19] Subsection 16(1)(b) of LA FOIP provides as follows:

**16(1)** Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) consultations or deliberations involving officers or employees of the local authority;

[20] The two-part test for subsection 16(1)(b) of LA FOIP, found in the Guide to FOIP at page 127, is as follows.

1. Does the record contain consultations or deliberations?
2. Do the consultations or deliberations involve officers or employees of a local authority?

[21] SPS applied subsection 16(1)(b) of LA FOIP to pages 15 and 16 in record group 4.

***1. Does the record contain consultations or deliberations?***

[22] A *consultation* is the action of consulting or taking action together; a conference in which the parties consult or deliberate. A consultation can occur when the views of one or more officers or employees of a local authority are sought as to an appropriate course of action.

[23] A *deliberation* means to weigh in mind or consider carefully with an eye towards making a decision.

[24] In support of its application of subsection 16(1)(b) of LA FOIP, SPS stated the following:

For the purpose of the Applicant's request, Subsection 16(1)(b) was applied to withhold email correspondences between the investigating officer and another officer for the express purpose of consultation regarding how to proceed with the Applicant's concerns, produced on pages 15 and 16 of file "GOSP 2014-48771".

...

In the case of this review, the investigating officer had sought the opinion of another officer regarding whether the file should be transferred to [other area]. The correspondence lasted for five emails: the first email contained the request for

consultation, the second was a response from the recipient, the third was additional information from the investigating officer, the fourth was confirmation that the report was read, and the final email contained the final opinion of the consulted [other area] member regarding what should be done. The first email supports that the opinions solicited during the consultation was sought by the person who prepared the record, as well as adds context to the situation. The fifth email supports that the those opinions were prepared for the purpose of doing something, such as taking an action, or making a decision or choice; in this case, the consulted [other area] member's advice and reasons for their decision.

[25] Upon review of the records, it appears that, as SPS has stated, the emails do appear to contain a *consultation* for the purpose of determining an appropriate course of action regarding the Applicant. The first part of the test has been met.

**2. *Do the consultations or deliberations involve officers or employees of a local authority?***

[26] *Involving* means including. An *officer or employee of a local authority* includes an individual employed by the local authority, including those retained under contract by the local authority.

[27] SPS indicated the discussions within this part of the records were had by "officers". As shown by information in the records, it is clear that "officers" in this context refers to individuals employed by SPS. The titles or positions of these individuals is apparent by their signature blocks on the emails. As such, the second part of the test is met.

[28] I find SPS properly applied subsection 16(1)(b) of LA FOIP to pages 15 and 16 in record group 4 as identified in the index of records. I recommend the SPS continue to withhold pages 15 and 16 in record group 4 pursuant to subsection 16(1)(b) of LA FOIP.

**5. Did the SPS conduct a reasonable search for records?**

[29] Section 5 of LA FOIP provides as follows:

**5** Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a local authority.

[30] Section 5 of LA FOIP is clear that access to records must be granted if they are in the possession or under the control of the local authority subject to any exemptions that may apply pursuant to LA FOIP.

[31] Local authorities must grant access to records in their possession or control subject to any exemptions in Parts III and IV of LA FOIP. If a local authority indicates that records do not exist, an applicant may request my office conduct a review of the local authority's search efforts. LA FOIP does not require a local authority to prove with absolute certainty that records do not exist, but it must demonstrate that it has conducted a reasonable search to locate the records.

[32] A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records reasonably related to the access to information request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances. Examples of information to support its search efforts that local authorities can provide to my office include the following:

- If personal information is involved, explain how the individual is involved with the local authority (e.g. current or former employee), and why certain branches or departments were searched;
- For general requests, tie the subject matter of the request to the department, branch, etc., involved. In other words, explain why certain areas were searched and not others;
- Identify the employees involved in the search and how they are experienced in the subject matter;
- Explain how the paper and/or records management systems are organized in the departments, branches, etc., involved in the search. Explain how records are classified, for example, if they are organized by alphabet, year, function or subject. Consider providing a copy of your organization's record schedule and/or destruction certificates. Consider how you have considered off-site records, records in possession of a third party but in the local authority's control, and mobile devices (e.g. laptops, smartphones and tablets);



- Explain the folders searched and how the folders link back to the subject matter requested; and
- Include on what dates employees searched and how long it took for each to search. Include the results of the search. Consider having employees provide affidavits to support a position that a record searched for does not exist, or to support the details provided.

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

[34] In this matter, it appears the Applicant asked for a “compiled list of events” or specific incidents or occurrences that involved themselves or that involved activities near their home on specific dates.

[35] SPS narrowed the Applicant’s access to information request into an itemized table for the Applicant to review. The table appears to have included 33 occurrences outlined by the Applicant. In locating responsive records, SPS added that it conducted 10 searches of its system (SIMS), and “select notebooks of relevant SPS officers”. In terms of its search efforts, SPS further stated the following:

As indicated in the table, an initial search was conducted on July 31, 2018 on SIMS for all information pertaining to the Applicant. When further information regarding the scope of the request was received from the Applicant on August 10, 2018, another search was conducted on that date on SIMS for the Applicant’s name and address, and a total of seven responsive records were located. Another search for records pertaining to the Applicant’s name and address was conducted on October 17, 2018. Following the receipt of clarification from the Applicant on October 22, 2018 regarding the SPS’s second request for clarification, three searches for the Applicant’s name or address were conducted on October 30, 31, and November 1, 2018.

A search for responsive calls for service that corresponded to the Applicant’s “compiled list of events” was also conducted on November 1, 2018. On November 7, 2018, another search was conducted for any records that were responsive to the Applicant’s “compiled list of events taken from phone and security camera records” within the revised timeframe of “2014 – to current date 2018”.

A search was then conducted on November 15, 2018 for any information regarding a specific event from the Applicant’s “compiled list of events taken from phone and

security camera records” for a specific date. After corresponding with the involved officer, one responsive record was located.

A keyword search of the SPS’s system was requested from the IT Division on November 15, 2018. This was requested because the clarified request had sought “any and all information recorded on myself or my property at [Applicant’s address]”. The rationale for searching only the requester’s name was that any records that would ultimately be responsive to the request would contain the Applicant’s name and not only the address. Additionally, if both the Applicant’s name and address were searched using, it was possible that certain responsive records would have been missed if they only contained the Applicant’s name. The records were received and then searched through on November 20, 2018. No responsive records were located.

Lastly, on December 17, 2018, a search was conducted on a specific event from the “compiled list of events taken from phone and security camera records” by means of acquiring and physically searching through two officer notebooks. No responsive records were located.

Taking the above outline and explanation into consideration, it can be ascertained that the SPS performed an extensive search for records over the course of nearly five months and clearly exceeded their duty to assist in the search for responsive records.

[36] It appears that SPS took the time to parse out the Applicant’s access to information request by itemizing each request in a table and having the Applicant review it. I commend the SPS for doing so as it is a practice that can help clarify and narrow the items on an access to information request. Upon review of the itemized table that was provided to the Applicant, as well as the records that were released to the Applicant, it also appears that SPS located records that were responsive given specific events and timeframes. It further appears that SPS did so using appropriate keyword searches, as outlined in what I have quoted in the preceding paragraph. Because of this, I find that SPS conducted a reasonable search for records.

#### **IV FINDINGS**

[37] I find that the pages in record groups 1, 3, 5 and 6 outlined at paragraph [12] of this Report contain personal information pursuant to subsections 23(1)(a), (b) and (d) of LA FOIP.

[38] I find SPS properly applied subsection 14(1)(j) of LA FOIP to the “ten codes” that appear on page 1 of record group 2, and page 17 of record group 4.

[39] I find SPS properly applied subsection 16(1)(b) of LA FOIP to pages 15 and 16 in record group 4.

[40] I find SPS conducted a reasonable search for records.

## **V RECOMMENDATIONS**

[41] I recommend SPS continue to withhold the personal information identified in paragraph [12] of this Report pursuant to subsection 28(1) of LA FOIP.

[42] I recommend SPS continue to withhold the ten codes as they appear on page 1 of record group 2, and page 17 of record group 4 pursuant to subsection 14(1)(j) of LA FOIP.

[43] I recommend SPS continue to withhold pages 15 and 16 in record group 4 pursuant to subsection 16(1)(b) of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 18th day of November, 2020.

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