



## REVIEW REPORT 248-2024, 249-2024

### Saskatoon Police Service

February 7, 2025

**Summary:** The Applicant submitted two access to information requests to the Saskatoon Police Service (SPS). In each of the access requests, the Applicant identified a third party individual in their access to information request. SPS responded to each access request by indicating it was refusing to confirm or deny the existence of records or that records ever did exist pursuant to subsections 7(2)(f) and 7(4) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant requested a review by the A/Commissioner. The A/Commissioner found that SPS properly invoked subsection 7(4) of LA FOIP. The A/Commissioner recommended that SPS take no further action.

### I BACKGROUND

[1] On September 24, 2024, the Saskatoon Police Service (SPS) received two access to information requests from the Applicant along with payment of the \$20 application fee for each. The first access request was as follows:

Please provide a list and copies of all calls, emails and concerns brought to Saskatoon Police Service with respect to a student at [Name of school] (legal name: [Student X], aka [Student X], with alternate spellings) from June 1, 2024 to the date this request is processed [the timeframe].

[2] The second access to information request was:

Please provide copies of any emails, briefings or communications with directives to SROs or other supporting officers (particularly those working at [Name of school] with respect to behavioural/harassment and/or arson concerns related to a student there (legal name: [Student X], aka [Student X], with alternate spellings) -- and the support plan which was being put in place.

- [3] In letters dated October 22, 2024, SPS responded to each of the access requests. SPS indicated it was refusing to confirm or deny that records existed or ever did exist pursuant to subsections 7(2)(f) and 7(4) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [4] On October 23, 2024, the Applicant requested reviews by my office.
- [5] At the intake stage of my office's review process, SPS indicated that if the records existed, the records would be exempt from access pursuant to subsections 14(1)(b)(ii), (c), (j), (k) and 28(1) of LA FOIP.
- [6] On November 8, 2024, my office notified both SPS and the Applicant that my office would be undertaking reviews of SPS' responses to each access request.
- [7] On January 7, 2025, SPS provided my office with its submission for both reviews.
- [8] The Applicant did not provide a submission.

## **II RECORDS AT ISSUE**

- [9] SPS informed the Applicant it was refusing to confirm or deny the existence of records responsive to the Applicant's access requests pursuant to subsections 7(2)(f) and 7(4) of LA FOIP. If records existed, SPS indicated that they would be exempt from access pursuant to subsections 14(1)(b)(ii), (c), (j), (k) and 28(1) of LA FOIP.

## **III DISCUSSION OF THE ISSUES**

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

- [10] SPS qualifies as a "local authority" pursuant to subsection 2(1)(f)(viii.1) of LA FOIP. Therefore, I find that I have jurisdiction to conduct these reviews.

**2. Did SPS properly invoke subsection 7(4) of LA FOIP?**

[11] Subsection 7(2)(f) of LA FOIP provides:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

...  
(f) stating that confirmation or denial of the existence of the record is refused pursuant to subsection (4);

[12] Subsection 7(4) of LA FOIP provides:

7(4) If an application is made with respect to a record that is exempt from access pursuant to section 14, 20 or 21 or subsection 28(1), the head may refuse to confirm or deny that the record exists or ever did exist.

[13] By invoking subsection 7(4) of LA FOIP, SPS is denying the Applicant the right to know whether a record (or records) exist. This subsection provides local authorities such as SPS with a significant discretionary power that should be exercised only in rare cases. It is my view that this provision is meant to protect highly sensitive records where confirming or denying the mere existence of a record would itself impose significant risk. For example, the risk of harm to witnesses as a result of revealing a law enforcement investigation is underway. Although section 14 of LA FOIP could protect records from being disclosed that fall into the category of law enforcement and investigations, this provision enables the local authority to address risks that could occur just by revealing records exist. It is not meant to protect a local authority from possible embarrassment or negative public scrutiny (*Guide to LA FOIP*, Chapter 3: “Access to Records,” updated May 5, 2023 [*Guide to LA FOIP*, Ch. 3], pp. 60-61).

[14] In order for SPS to be able to show it properly invoked subsection 7(2)(f) and 7(4) of LA FOIP, it must be able to:

1. Demonstrate that records (if they existed) would qualify for the particular exemption provided for at subsection 7(4) of LA FOIP.

2. Explain how disclosing the existence of records (if they existed) could reasonably compromise what it is protecting.

(*Guide to LA FOIP*, Ch. 3, p. 61)

1. ***Demonstrate that records (if they existed) would qualify for the particular exemption provided for at subsection 7(4) of LA FOIP.***

[15] SPS indicated that, if records existed, it would rely on subsections 14(1)(b)(ii), (c), (j), (k) and 28(1) of LA FOIP to deny the Applicant access. I will consider if subsection 14(1)(b)(ii) of LA FOIP would apply to the records, if they existed.

[16] Subsection 14(1)(b)(ii) of LA FOIP provides:

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

...  
(b) be injurious to the enforcement of:

...  
(ii) an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada;

[17] My office uses the following two-part test to determine if subsection 14(1)(b)(ii) of LA FOIP applies to records, if they existed:

1. Which Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada is being enforced?
2. Could the release of the record, if it existed, injure enforcement of the Act or regulation?

(*Guide to LA FOIP*, Chapter 4: “Exemptions from the Right of Access”, updated October 18, 2023 [*Guide to LA FOIP*, Ch. 4], pp. 50-51)

[18] Pages 51 to 52 of the *Guide to LA FOIP*, Ch. 4 provides the following definitions:

- “Enforcement” is the act or process of compelling compliance with a law, mandate, command, decree or agreement.

- An “Act or a regulation” means an Act of the Legislature together with any regulations issued thereunder and includes an Ordinance of the Northwest Territories in force in Saskatchewan.
- An “Act of Parliament of Canada or a regulation” encompasses all Acts enacted by the Parliament of Canada together with any regulations issued thereunder.
- “Injury” implies damage or detriment.

[19] In its submission, SPS cited the *Youth Criminal Justice Act* (YCJA), which is an Act enacted by the Parliament of Canada. SPS described how disclosing information about a youth would undermine the purpose of the YCJA:

The YCJA emphasizes rehabilitation and reintegration of young offenders into society, and disclosing information about a youth would undermine these goals through stigmatization, potentially hindering their ability to reintegrate into their community.

[20] I note that subsections 115(1) and 115(1.1) of the YCJA deal specifically with police records:

**115(1)** A record relating to any offence alleged to have been committed by a young person, including the original or a copy of any fingerprints or photographs of the young person, may be kept by any police force responsible for or participating in the investigation of the offence.

(1.1) The police force shall keep a record of any extrajudicial measures that they use to deal with young persons.

[21] Further, sections 118, 119, 120, 123 and 124 of the YCJA restricts who may have access to records kept under section 115 of the YCJA:

**118 (1)** Except as authorized or required by this Act, no person shall be given access to a record kept under sections 114 to 116, and no information contained in it may be given to any person, where to do so would identify the young person to whom it relates as a young person dealt with under this Act.

...

**119 (1)** Subject to subsections (4) to (6), from the date that a record is created until the end of the applicable period set out in subsection (2), the following persons, on request, shall be given access to a record kept under section 114, and may be given access to a record kept under sections 115 and 116:

...

**123** (1) A youth justice court judge may, on application by a person after the end of the applicable period set out in subsection 119(2), order that the person be given access to all or part of a record kept under sections 114 to 116 or that a copy of the record or part be given to that person...

...

**124** A young person to whom a record relates and his or her counsel may have access to the record at any time.

[22] The Applicant referenced a high school located in Saskatoon and identified the name of a student at the school in their access request. I note that subsection 2(1) of the YCJA defines “young person” as follows:

**young person** means a person who is or, in the absence of evidence to the contrary, appears to be twelve years old or older, but less than eighteen years old and, if the context requires, includes any person who is charged under this Act with having committed an offence while he or she was a young person or who is found guilty of an offence under this Act.

[23] High school students typically are “young persons” who are twelve years old or older but less than eighteen years old. If records existed about police involvement regarding the student, then I am satisfied that matters involving the student would be dealt with under the YCJA or would fall within the scope of the YCJA. Since the YCJA restricts access to records regarding youth, then the disclosure of such records under LA FOIP, if records existed, would be injurious to the enforcement of the YCJA. The two-part test for subsection 14(1)(b)(ii) of LA FOIP is met. I find that subsection 14(1)(b)(ii) of LA FOIP would apply to the records, if they existed. As such, there is no need for me to consider whether subsections 14(1)(c), (j), (k), and 28(1) of LA FOIP would apply to the records if they existed.

***2. Explain how disclosing the existence of records (if they existed) could reasonably compromise what it is protecting.***

[24] In its submission, SPS explained that to deny access to records would confirm the existence of records, which would reveal personal information about the individual named in the

Applicant's access request. Therefore, its practice is to refuse to confirm or deny the existence of records to individuals who are not involved in incidents. SPS said:

Denying access to records responsive to the requests as opposed to refusing to confirm or deny the existence of records would confirm the existence of records. As the applicant specifically named the involved youth, denial would confirm the identity of the youth. These reasons were why the SPS chose to refuse to confirm or deny the existence of records.

...

Disclosure of the fact that records exist or do not exist regarding the named youth would in itself convey personal information that would be subject to protection under LA FOIP. The SPS does not under usual practice disclose records to individuals who were not involved in the respective incidents that warranted a police response, due to heightened sensitivity surrounding police files. The SPS has not publicly confirmed the existence of threat assessments or any complaints about the youth, and the applicant has not provided the SPS with verified information that shows otherwise.

[25] I note that refusing to confirm or deny that records exist or ever did exist is a common practice by police services in circumstances when an applicant requests information about a matter involving a third-party individual. For example, in [Order F2010-10](#), the Alberta Office of the Information and Privacy Commissioner (AB IPC) upheld the Edmonton Police Service's (EPS) decision to refuse to confirm or deny the existence of any responsive records in response to an access to information request by an applicant who sought records about an EPS member. To do so would have been to reveal the personal information about the EPS member who was named in the access to information request:

[para 25] As already noted, given the Applicant's request, if records that are responsive to the Applicant's request did exist and the Applicant was informed of this, this would reveal that there was an investigation regarding allegations of theft by the EPS member. It would also reveal that the EPS member was the subject of a police investigation that led to his arrest, and resignation or retirement. Therefore, given that the EPS member was named in the Applicant's access request, it would disclose some information about the EPS member's criminal history, and the EPS member's employment history, along with the EPS member's name. Pursuant to section 17(4)(g)(i) of the Act, there is a presumption that revealing the existence of records that are responsive to the Applicant's request, if any do exist, would be an unreasonable invasion of the EPS member's personal privacy.

[para 26] As well, confirming the existence of records, if any, that were responsive to the Applicant's request would disclose information relating to the EPS member's employment history (that the EPS member retired or resigned following an

investigation into an allegation of theft). Pursuant to section 17(4)(d) of the Act, there is a presumption that confirming the existence of the records requested by the Applicant if any exist, would be an unreasonable invasion of the EPS member's personal privacy.

[26] Similarly, since the Applicant named a third-party individual in their access to information request, for SPS to confirm or deny the existence of records would reveal personal information about them. That is, confirming or denying the existence of records would reveal whether calls, emails and concerns were brought to SPS regarding the individual named by the Applicant in their access request. I find that SPS properly invoked subsection 7(4) of LA FOIP. I recommend that SPS take no further action.

#### **IV FINDINGS**

[27] I find that I have jurisdiction to conduct these reviews.

[28] I find that subsection 14(1)(b)(ii) of LA FOIP would apply to the records, if they existed.

[29] I find that SPS properly invoked subsection 7(4) of LA FOIP.

#### **V RECOMMENDATION**

[30] I recommend that SPS take no further action regarding the two access requests.

Dated at Regina, in the Province of Saskatchewan, this 7<sup>th</sup> day of February, 2025.

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