

LA FOIP *Encore Event* FOUNDATIONS

Access and Privacy Tips for Local Authorities

Municipal Sector *your questions answered*

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1:00 PM to 2:30 PM

Presented by

Michael Morris, Q.C., Director, Legal Services, SARM

Bukola Afolabi, Legal Services Advisor, Municipalities of Saskatchewan

Colleen Christopherson, Manager, Advisory Services, Government Relations

Municipal Sector

your questions answered

Access Related

1. What about informal requests (i.e. in a discussion)? If it is something you would provide in an access to information request, can you talk about it freely in the name of transparency?

Municipal Sector

your questions answered

Access Related

2. Can council ask not to charge for LA FOIP requests?

Municipal Sector

your questions answered

Access Related

3. What if the person requesting the information gives you a deadline?

Section 7 of LA FOIP

Response required

7(1) Where an application is made pursuant to this Act for access to a record, the head of the local authority to which the application is made shall:

(a) consider the application and give written notice to the applicant of the head's decision with respect to the application in accordance with subsection (2); or

(b) transfer the application to another local authority or to a government institution in accordance with section 11.

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

(a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;

(b) if the record requested is published, referring the applicant to the publication;

(c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;

(d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;

(e) stating that access is refused for the reason that the record does not exist;

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

(g) stating that the request has been disregarded pursuant to section 43.1, and setting out the reason for which the request was disregarded.

(3) A notice given pursuant to subsection (2) is to state that the applicant may request a review by the commissioner within one year after the notice is given.

(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.

(5) A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.

Section 12 of LA FOIP

Extension of time

12(1) The head of a local authority may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:

(a) where:

(i) the application is for access to a large number of records or necessitates a search through a large number of records; or

(ii) there is a large number of requests;

and completing the work within the original period would unreasonably interfere with the operations of the local authority;

(b) where consultations that are necessary to comply with the application cannot reasonably be completed within the original period; or

(c) where a third party notice is required to be given pursuant to subsection 33(1).

(2) A head who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within 30 days after the application is made.

(3) Within the period of extension, the head shall give written notice to the applicant in accordance with section 7.

Municipal Sector

your questions answered

Access Related

4. Should we give formal replies to informal requests (i.e. If you are not satisfied with this response, you may contact the Information and Privacy Commissioner's office)?

Section 6 of LA FOIP

Application

6(1) An applicant shall:

- (a) make the application in the prescribed form to the local authority in which the record containing the information is kept; and
- (b) specify the subject matter of the record requested with sufficient particularity as to time, place and event to enable an individual familiar with the subject-matter to identify the record.

(2) Subject to subsection (4) and subsection 11(3), an application is deemed to be made when the application is received by the local authority to which it is directed.

(3) Where the head is unable to identify the record requested, the head shall advise the applicant, and shall invite the applicant to supply additional details that might lead to identification of the record.

(4) Where additional details are invited to be supplied pursuant to subsection (3), the application is deemed to be made when the record is identified.

Deviations from required form

Section 2-26 of *The Legislation Act* provides that it is not mandatory for an individual to use the prescribed form (Form A) to make an application for access to information.

Deviations from required form

2-26 If an enactment requires the use of a specified form, deviations from the form do not invalidate a form used if:

- (a) the deviations do not affect the substance;
- (b) the deviations are not likely to mislead; and
- (c) the form used is organized in the same way or substantially the same way as the form the use of which is required.

In [Review Report 336-2017](#), the Commissioner addressed concerns raised by the Chinook School Division No. 211 regarding an applicant not using the prescribed access to information form (Form A). The Commissioner was of the view that it is not mandatory for applicants to use the prescribed form, provided the request is in writing and contains the information that pertains to the elements on Form A. Further, if the School Division required any additional information it should have advised the applicant at the time the access request was received. The Commissioner recommended that the School Division develop and implement a policy or procedure for the processing of access requests.

Municipal Sector

your questions answered

Access Related

5. Are all letters that are sent to councils available to the public? And are all letters sent on behalf of council public information?

Municipal Sector

your questions answered

Privacy Related

6. If someone calls to complain but refuses to provide their name, can we refuse to accept their complaint?

Municipal Sector

your questions answered

Privacy Related

7. Can councilors be provided a contact list with ratepayers' contact details?

Municipal Sector

your questions answered

Privacy Related

8. How does the personal privacy of people affect the Civic Address Registry for all municipal offices? The information is to be shared and registered with emergency personnel and the landowner can use it for deliveries, etc. or mapping.

Municipal Sector

your questions answered

Privacy Related

9. If an employee is under disciplinary sanction for having made a significant unauthorized (personal) purchase with a municipal credit card, can a citizen request details/a copy of that credit card transaction?

Municipal Sector

your questions answered

Privacy Related

10. In the case where a resident submits their opinion on land use planning decisions and wants it to be kept confidential, could we release their opinion (perhaps content of email) but withhold their name?

Municipal Sector

your questions answered

Privacy Related

11. If a ratepayer makes a letter of complaint, can ratepayers see that letter with redacted information?

Municipal Sector

your questions answered

Privacy Related

12. If a privacy breach occurs, does the City (local authority) have a duty to provide information to the public?

Section 28.1 of LA FOIP

Notification

28.1 A local authority shall take all reasonable steps to notify an individual of an unauthorized use or disclosure of that individual's personal information by the local authority if it is reasonable in the circumstances to believe that the incident creates a real risk of significant harm to the individual.

Real risk of significant harm

Real risk of significant harm may, among other things, include bodily harm, humiliation, damage to reputation or relationships, loss of employment, business or professional opportunities, financial loss, identity theft, negative effects on the credit record and damage to or loss of property.

Municipal Sector

your questions answered

Privacy Related

13. Can we include the name of the employee and their salary in the list of payables for approval for council? Or should we only indicate employee #?

Subsection 23(1)(d) of LA FOIP

Interpretation

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:

...

(d) any identifying number, symbol or other particular assigned to the individual;

...

(2) “**Personal information**” does not include information that discloses:

(a) The classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a local authority;

...

Municipal Sector

your questions answered

Privacy Related

14. Are employment reference checks considered personal information?

Subsection 23(1)(b) of LA FOIP

Interpretation

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:

...

(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;

...

Subsection 30(2) of LA FOIP

Individual’s access to personal information

30(2) A head may refuse to disclose to an individual personal information that is evaluative or opinion material compiled solely for the purpose of determining the individual’s suitability, eligibility or qualifications for employment or for the awarding of contracts and other benefits by the local authority, where the information is provided explicitly or implicitly in confidence.

Municipal Sector

your questions answered

Privacy Related

15. Is a councilor's letter of resignation public information?

Municipal Sector

your questions answered

Privacy Related

16. Regarding Information Management Service Providers (IMSPs), should we have a written agreement with a software company that provides specific software (e.g. municipal software)?

Section 23.2 of LA FOIP

Information management service provider

23.2(1) A local authority may provide personal information to an information management service provider for the purpose of:

- (a) having the information management service provider process, store, archive or destroy the personal information for the local authority;
- (b) enabling the information management service provider to provide the local authority with information management or information technology services;
- (c) having the information management service provider take possession or control of the personal information;
- (d) combining records containing personal information; or
- (e) providing consulting services.

(2) Before disclosing personal information to an information management service provider, the local authority shall enter into a written agreement with the information management service provider that:

- (a) governs the access to and use, disclosure, storage, archiving, modification and destruction of the personal information;
- (b) provides for the protection of the personal information; and
- (c) meets the requirements of this Act and the regulations.

(3) An information management service provider shall not obtain access to, use, disclose, process, store, archive, modify or destroy personal information received from a local authority except for the purposes set out in subsection (1).

(4) An information management service provider shall comply with the terms and conditions of the agreement entered into pursuant to subsection (2).

Municipal Sector

your questions answered

Privacy Related

17. After receiving an RFP that is confidential, how long should the Municipality hold it prior to deleting/destroying it?

Municipal Sector

your questions answered

Records Management

18. What about group texts between council and administration? Technology makes it so easy to communicate that way. What are the risks for that? What about record retentions for this discussion?

Municipal Sector

your questions answered

Cell Phone/Device Use

19. Should staff be using personal cell phones at work and, even if they are compensated by the municipality, could their phones be “seized” if a legal issue arises?

Municipal Sector

your questions answered

Cell Phone/Device Use

20. Working from home, should the town (local authority) provide laptops to staff who are working from home? Is it okay to use personal laptops? What will happen if there is an access request?

Municipal Sector

your questions answered

Tax Certificates

21. A tax certificate is public information. If resident A makes a request for resident B's tax certificate, can we grant the request?

Subsection 3(1) of LA FOIP

In [Review Report LA-2007-002](#) and [Investigation Report LA-2012-001](#), the Commissioner considered tax certificates and found that subsection 3(1)(a) of LA FOIP applied to tax certificates issued by a local authority because the information could be purchased by the public.

Application

3(1) This Act does not apply to:

- (a) published material or material that is available for purchase by the public;

Municipal Sector

your questions answered

Tax Certificates

22. Can anybody order a tax certificate or do they have to be a lawyer or financial institution?

Municipal Sector

your questions answered

Public Meetings and Meeting Minutes

23. If there are names in reports to council which are read out in a public meeting, when that report is requested, should it be withheld because there are names in the report?

Subsection 15(1)(b) of LA FOIP

Documents of a local authority

15(1) A head may refuse to give access to a record that:

...

- (b) discloses agendas or the substance of deliberations of meetings of a local authority if:
 - (i) an Act authorizes holding the meetings in the absence of the public; or
 - (ii) the matters discussed at the meetings are of such a nature that access to the records could be refused pursuant to this Part or Part IV.

Municipal Sector

your questions answered

Public Meetings and Meeting Minutes

24. Are the documents/RFPs to be opened at a public meeting?

Municipal Sector

your questions answered

Public Meetings and Meeting Minutes

25. In regards to municipal minutes and accounts payable, is payroll to be part of the minutes? Wages are public but is the actual pay cheque public? How do we decide what is public and what should be confidential with the employee?

Subsection 23(2)(a) of LA FOIP

Interpretation

23(2) “Personal information” does not include information that discloses:

- (a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a local authority;

...

Municipal Sector

your questions answered

Public Meetings and Meeting Minutes

26. What are the legal reasons that a public meeting of Council can go 'in camera' private session?

Section 120 of *The Municipalities Act*

Meetings to be public, exceptions

120(1) Subject to subsections (2) and (3), councils and council committees are required to conduct their meetings in public.

(2) Councils and council committees may close all or part of their meetings to the public if the matter to be discussed:

(a) is within one of the exemptions in Part III of The Local Authority Freedom of Information and Protection of Privacy Act; or

(b) concerns long-range or strategic planning.

(3) Any committee or other body that is established by council solely for the purpose of hearing appeals may deliberate and make its decisions in meetings closed to the public.

Municipal Sector

your questions answered

Tenders

27. What is considered public information regarding tenders? Do you just provide pricing for each company to the competitors or do you make it all public information?

Regarding tenders

In [Review Report 031-2015](#), the Commissioner looked at proposals submitted to a government institution during a Request for Proposals process. The Commissioner found that the entire proposals submitted by two third parties constituted commercial information because the proposals related to the buying or selling of goods and services. This was consistent with other jurisdictions including [British Columbia IPC Order F09-22](#) and [Ontario IPC Order MO-3179](#).

See also [Review Report 054-2015 and 055-2015](#) involving the City of Regina and Form of Tender documents.

Municipal Sector

your questions answered

Still have more questions?

Saskatchewan Information and Privacy Commissioner

Email: intake@oipc.sk.ca | Telephone: 306-787-8350 | Website: www.oipc.sk.ca | Twitter: @SaskIPC

Saskatchewan Association of Rural Municipalities

Email: mmorris@sarm.ca | Telephone: 306-761-3724 | Website: www.sarm.ca

Municipalities of Saskatchewan

Email: legal@munisask.ca | Telephone: 306-525-4389 | www.suma.org

Advisory Services and Municipal Relations, Ministry of Government Relations

Email: muninfo@gov.sk.ca | Telephone: 306-787-2680 |

Website: <https://www.saskatchewan.ca/government/government-structure/ministries/government-relations>