

SAMPLE OPERATIONAL POLICY Access to Information and Checklist

1. Purpose

The _____ of _____ (“the Municipality”)
(municipality type) (name)

recognizes the right of access by the public to information in the possession or under the control of the Municipality and is committed to fulfilling its obligations under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and *The Local Authority Freedom of Information and Protection of Privacy Act Regulations* (LA FOIP Regs).

The purpose of this policy is to establish appropriate controls and guidelines around providing access to information as required to carry out the Municipality’s statutory obligations pursuant to LA FOIP and the Municipality’s legitimate business and public interest mandates, including the principles of Open Government: transparency, accountability, accessibility and participation.

2. Scope

This policy applies to all employees and contractors of the Municipality.

3. Definitions

Access to Information Request – The formal process by which an individual may request access to the Municipality’s information under the provisions of LA FOIP. The term freedom of information request (FOI) is also used to describe an access to information request.

Administrator – the administrator of the Municipality appointed pursuant to Section 110 of *The Municipalities Act* (or section 49 of the *Northern Municipalities Act*).

Applicant – any individual who requests access to a record under LA FOIP.

City Clerk – the City Clerk of the Municipality appointed pursuant to section 85 of *The Cities Act*.

Contractor – an individual or company retained under a contract to perform services for the Municipality including any information management service providers (IMSP).

Control – is where the Municipality has the authority to manage the record including restricting, regulating and administering its use, disclosure or disposition.

Duty to Assist – the Municipality’s obligation to provide assistance to an applicant including responding to a request for access openly, accurately and completely.

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Employee – an individual employed by the Municipality, including an individual retained under a contract to perform services for the Municipality.

Exemption – a mandatory or discretionary provision under LA FOIP that authorizes the Municipality to refuse to give access to information contained in a record, or, in some cases, to refuse to acknowledge the existence of a record in response to a request.

Formal Request – a request for access to information, made in writing or presented on the prescribed Access to Information Request Form that states the applicant wishes to make application under LA FOIP.

Head – the Mayor/Reeve of the Municipality.

Informal Request – a request for information, which is general in nature, can be easily accessed in a minimal amount of time and can typically be handled by the department responsible for the information.

Information – what a record contains. It is also a term used to refer to the content of an electronic database or application. Regardless of the form, all recorded information in the possession or under the control of the Municipality is a record.

LA FOIP – *The Local Authority Freedom of Information and Protection of Privacy Act.*

Personal Information – means information about an identifiable individual of a personal nature which may include but is not limited to: information about an individual's race; religion; family status; age; birthdate; place of origin; employment or criminal history; financial information; health services number; driver's license number; social insurance number; home address, email address or telephone number; physical or mental condition of an individual; an individual's personal views or opinions except where they are about another individual.

Possession – physical possession plus a measure of control of the record.

Privacy – is the right to keep certain information private; freedom from unauthorized access to, use, or disclosure of one's personal information.

Record – means a record of information in any form and includes information that is written, photographed, recorded, digitized or stored in any manner, but does not include computer programs or other mechanisms that produce records.

Third Party – means a person or company other than the Municipality.

4. Policy

LA FOIP and (*The Cities Act, The Municipalities Act or The Northern Municipalities Act, 2010*) determine the Municipality's obligations to provide access to information in the Municipality's possession or under its control. Every employee and contractor with access to Municipal information, as a result of their employment or contract with the Municipality, is responsible for managing that information in accordance with this policy. Also, to the extent that an elected official is engaged in carrying out the mandate or functions of the Municipality, then LA FOIP most likely will apply to those records.

4.1 Access to Information

Pursuant to LA FOIP, an individual has the right to request access to any information in the possession or under the control of the Municipality.

The Municipality has a duty to assist in providing as much information as possible to the applicant while ensuring personal, confidential and third party information is protected in accordance with LA FOIP.

4.2 Informal Requests

Informal requests are handled by the employee responsible for the information, in consultation with the administrator as necessary.

4.3 Formal Requests

An applicant who wishes to make a formal request under LA FOIP is to complete the Access to Information Request Form (attached) available on the Municipality's or Saskatchewan Office of the Information and Privacy Commissioner's website or makes a request by email or letter stating the request is being made under LA FOIP.

The applicant is to send the request confidentially to the administrator. If an employee receives the formal access request, it should be forwarded to the administrator.

Formal requests are handled by the administrator, confidentially and immediately on receipt. The name of the applicant should be kept confidential.

Formal access to information requests are subject to an application fee, pursuant to LA FOIP Regs.

Processing fees are determined in accordance with LA FOIP Regs.

The administrator will use an access request checklist so as to be sure that all the steps have been taken (sample access request checklist attached).

Employees shall assist the administrator as necessary in obtaining information responsive to access to information requests in accordance with the timelines legislated under LA FOIP and contained in the access request checklist.

4.4 Duty to Assist

The Municipality has a duty to provide assistance to an applicant including to respond to a request for access openly, accurately and completely; to provide an explanation of any term, code or abbreviation used in the information, or to refer an applicant to a person who is able to supply an explanation if the Municipality is unable to do so.

4.5 Clarifying or Narrowing

If a formal access request is unclear, in other words, the administrator cannot determine the records being requested, the administrator should write the applicant asking the applicant to clarify the access request. This should be done as soon as possible upon receipt of the access request.

If the access request is clear as to the records being requested, the administrator, as part of the duty to assist, can contact the applicant to see if the access request can be narrowed. In other words, to see if fewer records might meet the purpose of the applicant and perhaps keep fees down. This should be done as soon as possible upon receipt of the access request.

4.6 Exemptions

LA FOIP provides for the protection of certain information. There are mandatory and discretionary provisions under LA FOIP authorizing the head to refuse to give access to information contained in a record including refusal to confirm or deny the existence of a record, in response to an access to information request.

When determining whether to apply discretionary exemptions, the head will exercise good faith in balancing the legitimate business or legal concerns of the Municipality and the principles of open government.

4.7 Reviews

An applicant who is not satisfied with how the Municipality has processed an access to information request may apply to the Saskatchewan Information and Privacy Commissioner (IPC) for a review of the matter.

The Municipality will cooperate with the IPC in the conduct of the review.

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The Municipality will work with the IPC, the applicant, and any third parties to come to an acceptable review result, whenever possible.

The administrator will determine whether to comply or not comply with any recommendations of the IPC following a review, with regard for the requirements of LA FOIP, the public interest, mandate of the Municipality and the principles of open government.

If the applicant and/or third party are not satisfied with the head's decision to comply or not comply with the recommendation of the IPC, they can appeal that decision to the court.

4.8 Open government

The Municipality is committed to supporting the concepts of transparency, accountability, accessibility and participation and as such is committed to proactively providing information.

5. Roles and Responsibilities

The administrator is responsible for:

- Corporate information, including personal information at the Municipality of residents and employees.
- Providing guidance with respect to this policy and ensuring this policy is followed.
- Receiving and managing all access to information requests including the application of all exemptions and working with the IPC when a review is undertaken.

Employees are responsible for:

- Forwarding all access requests to the administrator.
- Assisting with the search for responsive records.
- Compliance with this policy and related procedures and guidelines.

6. Related Forms

- Access to Information Request Form:
<http://www.qp.gov.sk.ca/documents/Forms/L27-1R1-A.pdf>
- Information and Privacy Commissioner, Sample Access Request Checklist at:
<https://oipc.sk.ca/assets/sample-operational-policy-and-checklist-for-municipalities.pdf>
- Sample letters, Ministry of Justice, Access and Privacy Branch website:
<http://www.publications.gov.sk.ca/deplist.cfm?d=9&c=4620>
- Ministry of Justice, Access Request checklist at:
<http://publications.gov.sk.ca/documents/9/90865-2018-06-07-Help%20with%20FOIP%20-%20Access%20Request%20Checklist.pdf>

7. Reference Material

Legislation

- *The Local Authority Freedom of Information and Protection of Privacy Act*, <http://www.publications.gov.sk.ca/freelaw/documents/English/Statutes/Statutes/L27-1.pdf>
- *The Cities Act*, <http://www.publications.gov.sk.ca/freelaw/documents/english/Statutes/Statutes/c11-1.pdf>
- *The Municipalities Act*, <http://www.publications.gov.sk.ca/freelaw/documents/English/Statutes/Statutes/M36-1.pdf>
- *The Northern Municipalities Act, 2010*, <http://www.publications.gov.sk.ca/freelaw/documents/English/Statutes/Statutes/N5-2.pdf>

Other resources:

- Ministry of Justice, Access and Privacy branch website: <https://www.saskatchewan.ca/government/municipal-administration/tools-guides-and-resources/access-to-information>
- City of Regina website: <https://www.regina.ca/residents/city-administration-new/office-of-the-city-clerk/access-to-information/index.html>
- City of Saskatoon website: <https://www.saskatoon.ca/city-hall/send-comments-concerns-city/access-information-requests>

Other IPC resources (www.oipc.sk.ca):

- The Rules of Procedure, <https://oipc.sk.ca/resources/rules-of-procedure/>
- [Best practices for Mayors, Reeves, Councilors, and School Board members in handling records that contain personal information and personal health information](https://oipc.sk.ca/resources/rules-of-procedure/)
- What Councillors should know about LA FOIP, <https://oipc.sk.ca/assets/what-councillors-should-know-about-lafoip.pdf>
- LA FOIP 101: the Basics for cities, Towns, Municipalities (webinar), <https://oipc.sk.ca/resources/webinars/la-foip-101-the-basics-for-cities-towns-municipalities-etc/>
- IPC Guide to Exemptions for FOIP and LA FOIP, <https://oipc.sk.ca/assets/ipc-guide-to-exemptions.pdf>
- Understanding the Duty to Assist, <https://oipc.sk.ca/assets/understanding-the-duty-to-assist.pdf>
- Steps to Charging Fees, <https://oipc.sk.ca/assets/steps-to-charging-fees.pdf>
- Fee Estimates – Quick Calculation Guide, <https://oipc.sk.ca/assets/steps-to-charging-fees.pdf>
- Best Practices for Responding to Access Requests, <https://oipc.sk.ca/assets/best-practices-for-responding-to-access-requests.pdf>
- Responsive Records Search Checklist at: <https://oipc.sk.ca/resources/access/>
- Search Checklist Blog, <https://oipc.sk.ca/search-checklist/>
- Severing Blog, <https://oipc.sk.ca/severing/>

Part III

Form A

[Clause 6(1)(a) of the Act]

Access to Information Request Form

LOCAL AUTHORITY FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

Form A

[Clause 6(1)(a)]

Personal information and personal health information on this form is collected under *The Local Authority Freedom of Information and Protection of Privacy Act* and *The Health Information Protection Act* and will be used or disclosed only as necessary to respond to your request.

INFORMATION ABOUT YOU

Last Name

First Name

Name of Company or Organization (if applicable - optional)

Address

City

Province

Postal Code

Day Phone Number

Alternate Number

Fax Number

Email

INFORMATION ABOUT THE RECORDS YOU ARE REQUESTING

Are you requesting:

- your own personal information.
- personal information about someone other than yourself (*attach proof that you have authority to receive the information requested*).
- general information.

To which local authority are you making your request? *Enter the name of the local authority that you believe has the records you are requesting.*

What records do you wish to access? *Please provide a detailed description of the records you wish to access. This information will help locate the records.*

LOCAL AUTHORITY FREEDOM OF INFORMATION
AND PROTECTION OF PRIVACY

What is the time period for the records you are requesting (if applicable)?

There is a processing fee of \$20 payable to the local authority. The person managing your request may contact you to seek clarification or to discuss aspects of the request, including the application of additional fees if necessary. You may request a waiver of the processing fee or additional fees, but may be required to provide evidence of substantial financial hardship (see section 8 of the regulations).

Please keep a copy of this request for your records.

Check if requesting waiver of processing fees:
I request that payment of the fees related to this request be waived because payment will cause me substantial financial hardship. Details are as follows: *(Use reverse of form if additional space is required.)*

Signature of Applicant

FOR OFFICE USE ONLY

Date Received

Application Number


30-Day Response Date

The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP) v.4

Sample Access Request Checklist

There are several key activities involved with processing an Access to Information request and you need to make sure all activities are completed within the legislated timeframes.

The following checklist can be used to ensure that all key tasks are completed and timelines are met. This is intended as a guideline and can be codified to suit the needs of your local authority. It is not always necessary to use the full 30 days allowed in the Act. A response should be provided sooner whenever possible.

Calendar Day Guidelines	Key Tasks	LA FOIP Tips	
Day 1 (day after receipt)	<ul style="list-style-type: none"> • Request received by local authority. • Log the request. • Set up an LA FOIP file. • Notify Head (Mayor, Reeve, Administrator, President or CEO) if required local authorities' set out in policy. • Start thinking about where responsive records might be (make notes). 	<ul style="list-style-type: none"> • If local authority charges the \$20 application fee, then ensure it is enclosed, otherwise application not yet fully made unless fee is waived. • Make sure staff are aware of what an Access Request is, the urgency of the request, and where to immediately forward the request if received in their office. • Begin making notes right away documenting the steps you have taken in processing the request. • When you notify the Head (Mayor, Reeve, President or CEO) do not disclose the identity of the applicant. • Notifying other staff should only be on a need-to-know basis. 	
30 Calendar Days to Respond	<ul style="list-style-type: none"> • Thirty-day clock starts 	<ul style="list-style-type: none"> • The thirty days start the day after the request is received in the local authority. For example, a request received November 1st is due December 1st. • See LA FOIP s. 7 	

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<p>Day 2</p>	<ul style="list-style-type: none"> • Check to see if a waiver of fees has been requested • Develop a search strategy: identify the area(s) of your local authority that may have responsive records and discuss the request with staff in the area(s). 	<ul style="list-style-type: none"> • If a waiver has been requested, need to ensure that the applicant has provided what is needed in order to make a decision to grant. • See LA FOIP Regulations s. 8. • Do not forget to search for responsive records in the local authority's possession and control (e.g. contractors; storage off site). • Remind program/branch areas of the serious nature of access requests and that search efforts should include <u>all</u> responsive records. • Only share the identity of the applicant with those with a need-to-know 	
	<ul style="list-style-type: none"> • Determine whether clarification from the applicant will be required to process the request. 	<ul style="list-style-type: none"> • If clarification is required, try to contact the applicant by telephone immediately. If unable to reach the applicant, send a clarification letter outlining the details required to process the request. • See LA FOIP s. 5.1, the duty to assist which requires a local authority to act openly, honestly and accurately with the applicant. This means making phone calls to the applicant to understand or narrow the request. 	
	<ul style="list-style-type: none"> • Consider if request may need to be transferred to another government institution or local authority, in accordance with the Act. 	<ul style="list-style-type: none"> • Transfers must occur within 15 days of receipt by the local authority. • See LA FOIP ss. 7(1) (b) and s. 11. 	

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<p>Days 3 to 10</p>	<ul style="list-style-type: none"> • Finalize which program area(s) might have responsive records • Program areas retrieve records and forward originals to Head or delegate (Administrator or access and privacy coordinator). • Consider need for time extension if circumstances in ss. 12(1) are present (e.g. large volume of records or requests, external consultations necessary or third party notice is required) and provide notice to applicant. • Copy retrieved records and return originals to program area. 	<ul style="list-style-type: none"> • Advise program areas to search for responsive records. • Keep accurate and complete notes of search on the Access Request file and keep copies of correspondence with all that were engaged. • Time extensions cannot exceed 30 days past the original 30 day deadline. • See LA FOIP ss. 12(1). 	
	<ul style="list-style-type: none"> • Consider fees and send estimate if applicable with request for deposit. • Clock stops until applicant indicates they agree to proceed and fee deposit is received. 	<ul style="list-style-type: none"> • A cost estimate must be provided if the fees will exceed \$100. • See LA FOIP Regulations s. 6 • If a fee estimate will be provided, do not complete search; rather, estimate fees based on representative sample. • See LA FOIP s. 9 and LA FOIP Regulations s. 5 • A local authority can require a deposit of up to 50% of the estimated fees prior to proceeding with work on the access request. • If a fee is going to be charged, no further work should be done until the 50% deposit is paid. 	
	<ul style="list-style-type: none"> • If there are third parties and if the head intends to release the records, send notices to third parties. 	<ul style="list-style-type: none"> • See LA FOIP PART V 	

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<p>Days 11 – 17</p>	<ul style="list-style-type: none"> • If 50% of fee is paid, clock starts again; proceed with work. • Prepare index of records and paginate the record. • Detailed line-by-line review of records; apply severance. • Apply exemptions and quote necessary exemptions where there is severing. 	<ul style="list-style-type: none"> • Continue consultation with program areas. • The index of records is a listing of the responsive records. • Keep accurate and complete records of reasons for each withheld record or severed portion. • See LA FOIP s. 8. • Keep accurate records of time spent severing if a fee estimate was issued. 	
<p>Day 15</p>	<ul style="list-style-type: none"> • <u>Last day</u> for transferring the request to another government institution or local authority. 	<ul style="list-style-type: none"> • If you are transferring the application, remember to provide a copy of the transfer letter to the government institution or local authority receiving the transfer and the applicant. • See LA FOIP s. 11 	
<p>Days 18 – 24</p>	<ul style="list-style-type: none"> • Consider whether a time extension is needed. 	<ul style="list-style-type: none"> • Ask those involved in consultation process to respond immediately to avoid a time extension. • See LA FOIP s. 12 	
	<ul style="list-style-type: none"> • Determine which third parties have consented to release of the records. • Obtain approval of Administrator of the records to be released. 		
	<ul style="list-style-type: none"> • Prepare the record and index of records. It is the administrator’s decision as to whether the index of records is shared with the applicant. • Provide the Administrator with recommendations to finalize the request. 		

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Days 25 - 27	<ul style="list-style-type: none"> • If necessary, finalize actual fee, to incorporate into final letter to applicant. • Records are not provided until all fees are paid if any are charged. 	<ul style="list-style-type: none"> • The fees cannot exceed the original estimate. • See LA FOIP s. 9 and LA FOIP Regulations s. 5 	
	<ul style="list-style-type: none"> • Send final response letter (called a section 7 letter) to applicant with records (unless access is fully denied or time extension was warranted). 	<ul style="list-style-type: none"> • Ensure all correspondence, documentation and notes have been included in the file. • It is important that notes of the steps taken be made as the access request is processed. • Do not release any third party information that the local authority intends to release until the expiry of the request for review period and verification that the third party has not requested a review. • See LA FOIP ss. 36(3) and 38(4). 	
Day 30	<ul style="list-style-type: none"> • Close file and maintain the file with other LA FOIP files. 	<ul style="list-style-type: none"> • If the section 7 response is not provided to the applicant by this deadline, it is a deemed refusal and applicant may request a review by the IPC. • See LA FOIP ss. 7(5) and ss. 38(1) (b). 	