LA FOIP 101: WHAT MUNICIPALITIES NEED TO KNOW

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Office of the Saskatchewan Information and Privacy Commissioner

OUTLINE

- Disclaimer
- LA FOIP
- Municipal Legislation
- Access to Information
- Request for Review
- Highlights of Review Reports
- Privacy and personal information
- Collection, use and disclosure
- Safeguards
- Privacy breaches and investigations by IPC
- Issues and Trends
- Wrap-up and Q&As

DISCLAIMER

- Materials prepared are by the IPC to assist persons in understanding the laws discussed and access and privacy best practices
- Only offered as non-binding, general advice as we cannot give advanced rulings
- Unable to discuss specific past or present cases unless Report issued or details otherwise publicly known

LA FOIP

- In force effective July 1, 1993
- Significant amendments January 1, 2018
- What it does:
  - Sets out the rules for access to records in the possession or under the control of a local authority; exceptions are limited and specific; and provides right to request correction/amendment
  - It sets out the rules for the collection, use and disclosure of personal information by those same bodies
  - It provides a right to complain to the Commissioner

APPLICATION

- LA FOIP applies to "local authorities" that include:

2(f) **"local authority"** means:

(i) a municipality;

…

(v) any board, commission or other body that:

(A) is appointed pursuant to The Cities Act, The Municipalities Act or The Northern Municipalities Act, 2010; and

(B) is prescribed;

Appendix
PART I

Boards, Commissions and Other Bodies Prescribed as Local Authorities
[*Subclause 2(f)(v) of the Act*]

- A board, commission or other body established pursuant to *The Cities Act*
- A board, commission or other body established pursuant to *The Municipalities Act*
- A board, association, commission or other organization appointed pursuant to *The Northern Municipalities Act*.

MUNICIPAL LEGISLATION

- *The Cities Act*, *The Municipalities Act*, and *The Northern Municipalities Act, 2010*
- On privacy, LA FOIP leads and municipal acts support
  - Administrator and clerk in charge of keeping municipal documents and records safe (CA s. 85; MA s. 111; NMA s. 127)
  - Requires certain documents to be public – approved minutes, financial statements, contracts approved by council (CA s. 91; MA s. 117; NMA s. 133)
  - Sets rules for when meetings can be closed to public – LA FOIP exception, long-range or strategic planning (CA s. 94; MA s. 120; NMA s. 138)

ACCESS TO INFORMATION

- About being open and accountable
- Right is to access to copies of source documents
- Summary, condensation, or secondary document is no satisfactory substitute
- Information in any recorded form or format
- Possession or control
- Not answers to questions
- Not time limited in terms of when created

DELEGATION

- Section 50 of LA FOIP

  50(1) A head may delegate to one or more officers or employees of the local authority a power granted to the head or a duty vested in the head.

  (2) A delegation pursuant to subsection (1):

  (a) is to be in writing; and

  (b) may contain any limitations, restrictions, conditions or requirements that the head considers necessary.

- The IPC recommends that the administrator receive training and be 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.

PROCESSING REQUESTS

- Once you have the $20 application fee, you have 30 days to complete the process
- Steps:
  - Develop a search strategy
  - Find responsive records
  - Determine if a fee estimate is warranted
  - Identify third parties that require notice
  - Apply appropriate extensions
  - Decide what can and cannot be released

REASONS TO WITHHOLD

- Exemptions: mandatory or discretionary
  - For example, third party personal information, solicitor-client material, advice from officials, lawful investigation, harm economic interests, trade secrets
- Exclusions
- Another Act prevails
- Publish in 90 days

COULD BE RELEASED

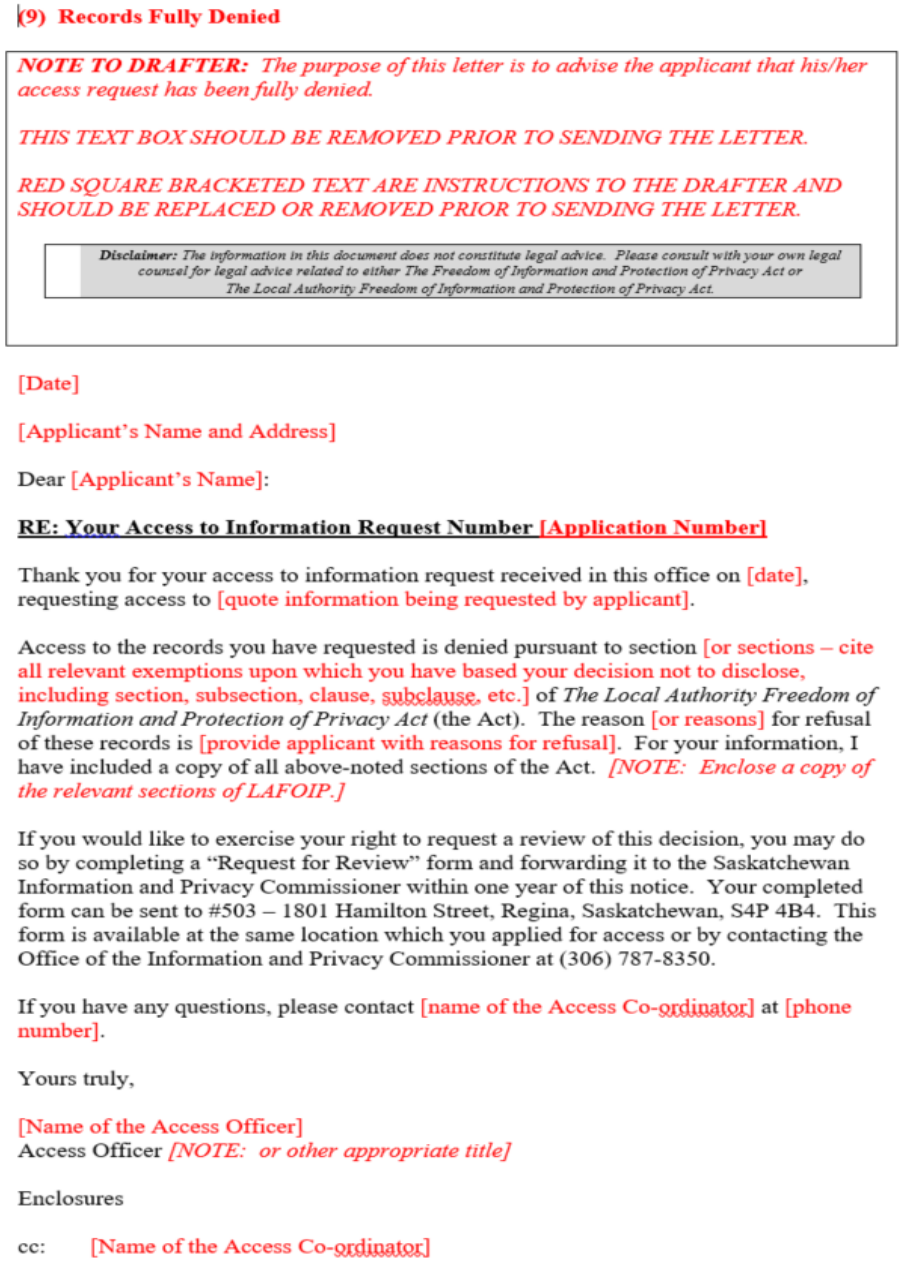
- Exercise of discretion
- Public interest override
- Time period has expired
- Consent of third party or decision maker
- De-identified, statistical or aggregate data only
- Otherwise publicly available
- Laws that require or permit disclosure
  - i.e. *The Cities Act*

    91(1) Any person is entitled at any time during regular business hours to inspect and obtain copies of :

    (a) Any contract approved by the council, any bylaw or resolution and any account paid by the council relating to the city;

SECTION 7 RESPONSE

- Last step of the process
- Send decision letter to applicant
- Templates available at http://www.publications.gov.sk.ca/deplist.cfm?d=9&c=4620
  - Tailor as necessary



(9) Records Fully Denied

NOTE TO DRAFTER: *The purpose of this letter is to advise the applicant that his/her access request has been fully denied.*

THIS TEXT BOX SHOULD BE REMOVED PRIOR TO SENDING THE LETTER.

RED SQUARE BRACKETED TEXT ARE INSTRUCTIONS TO THE DRAFTER AND SHOULD BE REPLACED OR REMOVED PRIOR TO SENDING THE LETTER.

Disclaimer: *The information in this document does not constitute legal advice. Please consult with your own legal counsel for legal advice related to either The Freedom of Information and Protection of Privacy Act or The Local Authority Freedom of Information and Protection of Privacy Act.*

[Date]

[Applicant's Name and Address]

Dear [Applicant's Name]:

RE: Your Access to Information Request Number [Application Number]

Thank you for your access to information request received in this office on [date], requesting access to [quote information being requested by applicant].

Access to the records you have requested is denied pursuant to section [or sections – cite all relevant exemptions upon which you have based your decision not to disclose, including section, subsection, clause, subclause, etc.] of *The Local Authority Freedom of Information and Protection of Privacy Act* (the Act). The reason [or reasons] for refusal of these records is [provide applicant with reasons for refusal]. For your information, I have included a copy of all above-noted sections of the Act. *[NOTE: Enclose a copy of the relevant sections of LAFOIP.]*

If you would like to exercise your right to request a review of this decision, you may do so by completing a "Request for Review" form and forwarding it to the Saskatchewan Information and Privacy Commissioner within one year of this notice. Your completed form can be sent to #503 – 1801 Hamilton Street, Regina, Saskatchewan, S4P 4B4. This form is available at the same location which you applied for access or by contacting the Office of the Information and Privacy Commissioner at (306) 787-8350.

If you have any questions, please contact [name of the Access Co-ordinator] at [phone number].

Yours truly,

[Name of the Access Officer]
Access Officer *[NOTE: or other appropriate title]*

Enclosures

cc: [Name of the Access Co-ordinator]

SAMPLE OPERATIONAL POLICY – ACCESS TO INFORMATION

- https://oipc.sk.ca/assets/sample-operational-policy-for-municipalities.pdf
- Purpose
- Scope
- Definitions
- Policy
- Roles and Responsibilities
- Related Forms
- Reference Material
- Form A – Access to Information Request Form

REQUEST FOR REVIEW

- Access request
  - Public body denial
  - Citizen requests review by IPC
  - Telephone call or email
- Early resolution attempts
- Notification letter
  - Ask for index of records
  - The record – IPC will not release
  - Submission
  - 14 days
- Draft Report - comment 7 days
- Final Report
  - On website 3 days later
  - Public body has 30 days to respond
- Applicant or third party can appeal to the court

*A chart of the process is available on our website at http://www.oipc.sk.ca/Resources_Citizens_Access.htm

REVIEW REPORTS

- 223-2018
- 193-2018
- 140-2018
- 035-2018

Privacy

IT'S ALL ABOUT ME

- Information privacy defined:
  - Right of an individual to determine for him/herself when, how and to what extent he/she will share his/her **"personal information"**
- Personal information defined:
  - Generally, its is information about an identifiable individual
  - Defined by the applicable privacy law
  - Others opinions about me are my personal information

NOT PERSONAL INFORMATION

- No concern if de-identified, or provided as statistics only, or as aggregate data
- Employment specific information (i.e. business card information, job duties, salary, etc) and 'work product'
- However, employment history is personal information

KEY TERMS

- Confidentiality
  - Obligation to protect the personal information entrusted to an organization
    - Other types of confidential information includes proprietary information such as trade secrets, solicitor-client, cabinet confidences.
      - No privacy interests engaged as not personal information. Must be protected nonetheless.
- Security
  - Assessing threats & risks to personal information and taking steps to protect

COLLECTION, USE, AND DISCLOSURE RULES

- Data transactions
- Need authority to act
- Data minimization principle
- Exercise of discretion

SAFEGUARDS

- To prevent privacy breaches implement and utilize physical, administrative and technical safeguards including:
  - Monitoring, supervising and inhibiting some data practices ('need-to-know'; user IDs and passwords; locked doors/filing cabinets)
  - Orientation & Training
  - Policies and Procedures
  - Proper Disposal Methods

WHAT TO DO IF A PRIVACY BREACH OCCURS

- Five Key Steps in Responding to a Privacy Breach
    - Step 1: Contain;
    - Step 2: Investigate;
    - Step 3: Assess and Analyze;
    - Step 4: Notify; and
    - Step 5: Prevent.

INVESTIGATION BY IPC

- Breach of privacy complaints
  - Public body proactively reports
    - If IPC is satisfied with response, most likely will close file informally
    - May end in a public report if IPC not satisfied with handling
  - Citizen asks that IPC investigate
    - IPC requests public body to do internal investigation
    - IPC does further investigation
    - Draft Report to public body (same timelines as in a review)
    - Final Report (same timelines as in a review)
    - Posted on IPC website

PREVENTION IS WORTH A POUND OF CURE!

- Adhere to need-to-know and data minimization principles
- Information life cycle management
- Confidentiality undertakings or pledges
- Get it in writing (i.e. contracts, agreements, policies, procedures)
- Make sure it's accurate and complete
- Train, train, and train some more
- Restrict, suspend or disable user accounts when individuals on leave, change roles or are terminated
- Monitor & Audit
- Secure destruction

ISSUES AND TRENDS – QUICK TAKES

- Who's in charge?: mayor or administrator?
- What can I charge?: fees beyond application fees
- Who owns it?: email accounts and municipal electronic devices

RESOURCES

- IPC Website has many resources – www.oipc.sk.ca *IPC Guide to Exemptions*
- *Best Practices for Responding to Access Requests*
- *What to Expect During a Review with the IPC*
- *Privacy Breach Guidelines for Government Institutions and Local Authorities*
- *What Councillors should Know about LA FOIP*
- *Best Practices for Mayors, Reeves, Councillors and School Board Members in Handling Records that Contain PI and PHI*
- *LA FOIP Sound Bytes – Q & A Webinars for Cities, Towns, villages, Rural Municipalities, etc*

QUESTIONS?

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Updated resources are at:

www.oipc.sk.ca