

**CITY OF SASKATOON**

**DECISION OF THE HEAD REGARDING  
REPORT LA-2011-001  
OF THE SASKATCHEWAN  
INFORMATION AND PRIVACY COMMISSIONER**

The Saskatchewan Information and Privacy Commissioner has issued a report dated February 2, 2011 in response to a Request for Review filed by a person who disagreed with the City of Saskatoon's refusal in 2005 and 2006 to release certain records relating to the development of River Landing in the South Downtown.

Section 45 of *The Local Authority Freedom of Information and Protection of Privacy Act* states as follows:

- 45 Within 30 days after receiving a report of the commissioner pursuant to subsection 44(1), a head shall:
- (a) make a decision to follow the recommendation of the commissioner or any other decision that the head considers appropriate; and
  - (b) give written notice of the decision to the commissioner and the persons mentioned in clause 44(1)(b).

The duties of head have been delegated by City Council to the City Clerk. The purpose of this report is to provide the head's decision regarding the recommendations of the Information and Privacy Commissioner. This report will be submitted to the Commissioner and to the applicant, in accordance with Subsection 45(b).

Janice Mann, City Clerk  
February 16, 2011

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City of Saskatoon Files: 416-2005-4 and 416-2006-6  
OIPC Files: 011/2005-LA FOI/AI and 044/2006-LA FOI/AI

## **BACKGROUND**

1. There were two requests for records. The first request, filed in February 2005, was for a complete copy of the four Expression of Interest submissions relating to the development of River Landing. The second request, filed in May 2006 was for all records relating to the Spa Hotel and Parcel “Y” site within River Landing.
2. The first request was denied in accordance with the City of Saskatoon’s policy that Expressions of Interest (EOIs) and Requests for Proposals (RFPs) are not released since they contain proprietary information provided by the bidders, and that the submissions were provided in explicit confidence to the City in that the bidders were told that their Expressions of Interest, including the names of the unsuccessful bidders, would be kept confidential.
3. Approximately 70 pages of records relating to the second request were released on June 6, 2006. An additional four records were released with portions severed. Approximately 509 pages were withheld for one or more of the following reasons: Solicitor/Client Privilege; consultations or deliberations involving employees of the City; commercial information supplied in confidence by a third party; analyses developed for the local authority; information submitted to *in camera* meeting; draft resolution or bylaw; considerations that deal with negotiations on behalf of local authority; and advice, proposals and recommendations developed for the City. The applicant was also advised that there were EOI submissions from the unsuccessful bidders relating to a Realtor Call for Expressions of Interest, and that the unsuccessful bidders would be contacted to ask if they would give their consent for the release of their submission.
4. On June 29, 2006 three submissions relating to the Realtor Call for Expressions of Interest were released, with the permission of the bidders, and the applicant was advised that the fourth bidder did not give permission.

## **REVIEW BY OIPC**

In April 2005 and June 2006 the applicant requested the Information and Privacy Commissioner to review the City’s decisions regarding the two applications.

The Information and Privacy Commissioner issued his report on February 2, 2011, stating that, in his opinion, the City improperly applied certain sections of the *Act* to all of the withheld records, properly applied certain sections of the *Act* to some of the withheld records, should sever certain portions of the EOI submissions that contain personal information of third parties, and that “in many cases the City did not meet its burden of proof to establish that access to the requested records should be denied”.

Despite the City having provided the Commissioner with an eleven-page chart with all of the withheld documents described and numbered, the Commissioner did not specify in his report which of the records he felt were properly withheld or which he felt should be disclosed.

## **DECISION OF HEAD RELATING TO COMMISSIONER'S RECOMMENDATIONS**

Recommendation of Commissioner:

[128] I recommend that the City review the analysis and guidance contained within this Report and determine which documents, or portions of, do not qualify for the cited exemptions and release those documents to the Applicant.

### **Head's Decision:**

*I will review all of the withheld documents in light of the Commissioner's analysis and of the fact that the records are all more than four years old and that the reasons for withholding in 2005 and 2006 might not still apply in 2011.*

[129] I recommend that the City consider exercising its discretion and decide whether there are indeed actual reasons or a need to withhold or sever any of the documents.

### **Head's Decision:**

*There were indeed "actual reasons" to withhold the documents in 2005 and 2006. City Council and its Administration were just getting started on all of the work involved in deciding how to develop River Landing. All decisions made by City Council were done properly in a public forum; however much discussion and analyses was required in order to formulate the recommendations that were voted on by City Council. Governments require and should be afforded the space to do their work – there can be harm to Governments if the substance of their deliberations is revealed before or too soon after the issues were considered. In 2005 and 2006 the issues were in the process of being considered.*

*As I indicated in my response to recommendation 128, I will review the withheld documents in light of the fact that the records are all more than four years old and that that the reasons for withholding in 2005 and 2006 might not still apply in 2011.*

[130] I recommend that the City release to the Applicant the third party documents for which consent to release was given: the document that makes up Record 2 (that being the third party E document), as well as the EOI submission of third party C.

### **Head's Decision:**

*I will release the third party documents (i.e. "E" and "C") for which consent to release was given. The passage of time is likely the reason why permission is now being given. However I will not release the EOIs to which consent to release was refused. These submissions were*

*provided in confidence to the City, and contain proprietary information. If the City did not follow this policy companies would not submit proposals, since their ideas could be stolen by another party.*

[131] If upon implementation of these recommendations the City requires guidance in applying the exemptions to each document, my office would provide such assistance.

**Head's Decision:**

*I thank the Commissioner for his offer and will request assistance if required.*

Dated at Saskatoon, Saskatchewan, this 16<sup>th</sup> day of February, 2011.

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Janice Mann, City Clerk