



## **REVIEW REPORT 215-2017**

### **City of Regina**

**October 6, 2017**

**Summary:** The applicant submitted a request to the City of Regina (the City) for a fire investigation report. The City responded that access to the record was refused pursuant to subsection 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), claiming the record did not exist. The Information and Privacy Commissioner (IPC) found that it was reasonable for the City to conclude the record did not exist. The IPC recommended the City implement mandatory annual access and privacy training for all employees.

### **I BACKGROUND**

[1] On August 3, 2017, the Applicant emailed a letter to the City of Regina (the City), Regina Fire and Protective Services (RFPS) requesting a fire investigation report at the GM Building (1212 Winnipeg Street).

[2] On August 9, 2017 RFPS responded indicating:

We acknowledge receipt of your letter received in our office on August 3, 2017. Your request has been submitted through proper process and a copy of the Fire Investigation Report will be provided to you in due course.

[3] On August 21, 2017, RFPS responded to the Applicant stating “a report is not yet available for release. We are unable to advise as to when a report may be available for release.”

[4] On August 21, 2017, the City’s Legal Counsel also emailed the Applicant indicating:

Your August 3, 2017 letter requesting access to fire investigation report for 1212 Winnipeg Street has been forwarded to me for your reply. Information regarding how to submit an access to information request to the City may be found here: [http://www.regina.ca/residents/council-committees/learn-city-clerk/access\\_to\\_information\\_and\\_protection\\_of\\_privacy/index.htm](http://www.regina.ca/residents/council-committees/learn-city-clerk/access_to_information_and_protection_of_privacy/index.htm).

- [5] On August 22, 2017, the Applicant submitted an access to information request form along with a \$20 application fee to the City's Access and Privacy department for:

A fire occurred at the GM Building, 1212 Winnipeg Street, Regina, SK on or about May 2, 2017 and a Fire Inspection Report has been generated outlining the details of same.

- [6] On August 23, 2017, the City responded to the Applicant stating access to the record was refused pursuant to subsection 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) because "the document you have requested does not exist as the investigation is not complete."

- [7] On August 24, 2017, my office received a request for review from the Applicant.

- [8] On August 30, 2017, my office provided notification to both the Applicant and the City of my intention to undertake a review.

## **II RECORDS AT ISSUE**

- [9] There are no records at issue as the City has taken the position that the record does not exist.

## **III DISCUSSION OF THE ISSUES**

### **1. Has the City provided a reasonable explanation for why the record does not exist?**

- [10] The City's response to the Applicant advised that access to the responsive record was denied pursuant to subsection 7(2)(e) of LA FOIP which provides:

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

...

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

- [11] The Applicant's submission provided that sections 20 and 23 of *The Fire Safety Act* required the City to commence an investigation within three business days of the fire and complete a report within 30 days of the conclusion of the investigation. The Applicant indicated that if a report was not completed within the statutory timelines provided, the City would not be in compliance with that Act.
- [12] The Applicant asserted that during an August 21, 2017 conversation with RFPS he was advised the report was complete but not yet available from the legal department. On the same day, the Applicant received an email from the City's Legal Counsel outlining how to submit an access to information request but did not indicate the record did not exist. Based on this, the Applicant was also of the opinion the record did exist and the City was delaying production of the record.
- [13] The Applicant provided my office with copies of the written correspondence between himself and the City. However, there was no material provided to support the content of the conversation referred to by the Applicant.
- [14] The City's submission to my office provided an affidavit from the Fire Marshal for the City of Regina. This individual is also considered the Fire Inspector within the meaning of *The Fire Safety Act*. The Fire Inspector indicated that its investigation regarding this fire was still ongoing at the time of the Applicant's access to information request. As the investigation was still underway, the resulting Fire Investigation Report had not been completed. The affidavit provided that the investigation commenced on May 3, 2017, one day after the occurrence of the fire, and the investigation concluded on September 5, 2017. The resulting Fire Investigation Report was completed the same day.

[15] Now that the Fire Investigation Report is complete, the City has notified my office that the Applicant's access to information request file has been reopened. Once the City has reviewed the record it will provide a response to the Applicant providing access or advising what exemptions it is applying to withhold access.

[16] I find it is reasonable that the City found the record did not exist when the Applicant's access to information request was initially received.

**2. Does the City have policies, procedures and training for employees regarding processing access to information requests?**

[17] The Applicant initially requested the fire investigation report from RFPS on August 3, 2017. RFPS emailed the Applicant on August 21, 2017 advising the fire investigation report was not available for release.

[18] On August 21, 2017, the Applicant also received an email from the City's Legal Counsel. The email provided the Applicant with a link to a webpage on the City's website with details on how to request information from the City.

[19] The link, provided in the August 21, 2017 email from the City, directed the Applicant to a page on the City's website that provided the following regarding requesting information:

How do I make a request?

Always make an information request first.

Make a formal FOI request if the information sought has not been made available through the informal process or if it is believed the information would not be made available through the informal process.

[20] On August 22, 2017, the Applicant submitted a formal access to information request form to the City's Access and Privacy Team along with a \$20 application fee.

[21] The following day, August 23, 2017, the City responded indicating the record did not exist and access was denied pursuant to subsection 7(2)(e) of LA FOIP.

[22] On the City's internal intranet website, a policy, procedure and training videos relating to the formal and informal access to information process is available to all employees.

[23] The City's Access to Information policy provides the following regarding the two processes for requesting information:

A FOI request [freedom of information request] can either be informal or formal but in either case must be made in writing.

Informal requests are typically handled by the business area responsible for the information, in consultation with the APT [Access and Privacy Team] as necessary.

Formal FOI requests are handled by the APT and must be transferred to the APT immediately on receipt (legislative timelines are outlined under LAFOIPP). The name of the applicant making the request is personal information; requests must be handled confidentially.

Formal FOI requests are subject to an application fee, pursuant to LAFOIPP.

[24] I find the City processed the requests submitted by the Applicant appropriately based on their Access to Information policy.

[25] The City also advised my office it provides a number of access and privacy training sessions to employees. All new employees receive access and privacy training as part of the City's new employee orientation. The City also provides a half-day general Access, Privacy, Security & Information Management training session that is available to employees quarterly. Upon request, the City will also develop specialized access and privacy training sessions tailored to the specific requesting department.

[26] I commend the City for the array of privacy training available to employees; however, it does not appear that it is mandatory for all employees to attend these sessions on a regular basis. I have, in many other reports, recommended that a public body implement a program of mandatory annual training for all employees. As the City, in many respects,

is a leader in access and privacy issues, I would hope it would consider this recommendation.

[27] I recommend the City develop and implement an access and privacy training session that is mandatory for all employees to complete annually.

#### **IV FINDING**

[28] I find that the City has provided a reasonable explanation to conclude the record did not exist at the time of the access to information request.

#### **V RECOMMENDATION**

[29] I recommend the City implement mandatory annual access and privacy training for all employees.

Dated at Regina, in the Province of Saskatchewan, this 6th day of October, 2017.

Ronald J. Kruzeniski, Q.C.  
Saskatchewan Information and Privacy  
Commissioner