



DISREGARD DECISION 070-2024, 074-2024, 076-2024

Rural Municipality of Reford No. 379

April 2, 2024

Summary: The Rural Municipality of Reford No. 379 (RM) applied to the Commissioner for authorization to disregard three access to information requests from the Applicant pursuant to subsection 43.1 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner granted the RM's application to disregard the three access requests pursuant to subsection 43.1(2)(c) of LA FOIP.

I BACKGROUND

[1] On February 16, 2024, the Rural Municipality of Reford No. 379 (RM) received the following three access to information requests from the Applicant:

RM file 05-2024; IPC file 070-2024

Order of Council approving Administration to contact ZEL Safety and SCSA to attempt to cancel [Name] safety courses he personally booked with his personal credit card.

RM file 07-2024; IPC file 074-2024

Building/Room Rentals for Harassment Complaint Investigation against Reeve, Administration and the Council for meetings held at Wilkie Curling Rink – Wilkie, SK, Battlefords Chamber of Commerce – North Battleford, and Alex Dillabough Centre – North Battleford. Any and all meals, mileage, and possible hotel cost for having [Name] at these meetings. I want the total associated cost to the ratepayers for these meetings. Council members and [Name] included. Copies of the Posted Notices for all of these duly held Meetings of Council.

RM file 09-2024; IPC file 076-2024

Contracts for all Administration staff (current and past) working “remotely” since September 2023.

- [2] In letters dated February 29, 2024, for each of the three access requests, the RM indicated it was extending the 30-day response period set out in subsection 7(2) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) by an additional thirty days pursuant to subsection 12(1)(a)(ii) of LA FOIP. The RM sent these letters to the Applicant via registered mail; however, the Applicant refused the letters and returned the letters to the RM on March 5, 2024, and March 26, 2024.
- [3] Then, on March 8, 2024, the RM asked my office to disregard the Applicant’s access to information requests pursuant to subsections 43.1(2)(a), (b), and (c) of LA FOIP. The RM provided my office with a copy of its application and supporting documentation.
- [4] As a part of the process to apply to my office to disregard access requests, local authorities must also provide a copy of its application to disregard to the Applicant.
- [5] On March 12, 2024, the RM sent a copy of its application to disregard the Applicant’s access requests to the Applicant by registered mail.
- [6] On March 14, 2024, the RM provided my office with tracking information from Canada Post that shows that the Applicant refused to receive mail from the RM.
- [7] On March 15, 2024, my office notified the RM that the clock on processing the access requests was stopped.
- [8] On March 19, 2024, my office notified both the RM and the Applicant of my office’s intent to consider the RM’s application to disregard the Applicant’s three access requests.
- [9] My office provided the Applicant with the opportunity to provide a submission.
- [10] On March 25, 2024, the Applicant provided a submission to my office.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[11] The RM is a “local authority” pursuant to subsection 2(1)(f)(i) of LA FOIP. Therefore, I have jurisdiction to consider this application to disregard the three access to information requests.

2. Should the RM’s application pursuant to subsections 43.1(2)(a), (b) and (c) of LA FOIP be granted?

[12] Section 43.1 of LA FOIP provides a local authority with the ability to apply to the Commissioner with a request to disregard an access to information request or a correction request. Section 43.1 of LA FOIP provides as follows:

43.1(1) The head may apply to the commissioner to disregard one or more applications pursuant to section 6 or requests pursuant to section 31.

(2) In determining whether to grant an application or request mentioned in subsection (1), the commissioner shall consider whether the application or request:

(a) would unreasonably interfere with the operations of the local authority because of the repetitious or systematic nature of the application or request;

(b) would amount to an abuse of the right of access or right of correction because of the repetitious or systematic nature of the application or request; or

(c) is frivolous or vexatious, not in good faith or concerns a trivial matter.

(3) The application pursuant to subsection 6(1) or the request pursuant to clause 31(1)(a) is suspended until the commissioner notifies the head of the commissioner’s decision with respect to an application or request mentioned in subsection (1).

(4) If the commissioner grants an application or request mentioned in subsection (1), the application pursuant to subsection 6(1) or the request pursuant to clause 31(1)(a) is deemed to not have been made.

(5) If the commissioner refuses an application or request mentioned in subsection (1), the 30-day period mentioned in subsection 7(2) or 31(2) resumes.

[13] An application to disregard is a serious matter as it could have the effect of removing an applicant's express right to seek access to information. However, LA FOIP recognizes that not all access to information requests are appropriate. Section 43.1 of LA FOIP exists to preserve the proper intent and functioning of the Act. Former British Columbia Information and Privacy Commissioner (BC IPC), David Loukidelis, said the following about the role of the equivalent provision in British Columbia's Act:

...Access to information legislation confers on individuals such as the respondent a significant statutory right, *i.e.*, the right of access to information (including one's own personal information). All rights come with responsibilities. The right of access should only be used in good faith. It must not be abused. By overburdening a public body, misuse by one person of the right of access can threaten or diminish a legitimate exercise of that same right by others, including as regards their own personal information. Such abuse also harms the public interest, since it unnecessarily adds to public bodies' costs of complying with the Act. Section 43 exists, of course, to guard against abuse of the right of access...

([BC IPC Order 99-01](#) at p. 7)

[14] In its application to my office, the RM submitted that the three access to information requests should be disregarded pursuant to subsections 43.1(2)(a), (b) and (c) of LA FOIP. I will analyze subsection 43.1(2)(c) of LA FOIP first.

Subsection 43.1(2)(c) of LA FOIP

[15] For subsection 43.1(2)(c) of LA FOIP to apply, the RM would have to demonstrate that the applicant's access to information requests are frivolous, vexatious, not in good faith or concerns a trivial matter.

[16] In its application, the RM asserted that the Applicant's access requests were not made in good faith:

The pattern of the requests, and the frequency of both the requests and complaints, launched by the applicant show the applicant's aim to overwhelm, harass and burden the municipality.

The Applicant has now refused to accept the responses of the municipality, which have been sent to him via registered mail, to the various requests for information he has submitted. To date [Name] accepted one oversize package but refused nine business letters that were sent via registered mail. Please see the attached documents indicating these refusals at the post office. **This shows both an objective other than to gain access and that these requests may not be made in good faith.**

[Emphasis added]

[17] My office has defined “not in good faith” as follows:

“Not in good faith” means the opposite of “good faith”, generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, **or a neglect or refusal to fulfill some duty** or other contractual obligation, not prompted by an honest mistake as to one’s rights, but by some interested or sinister motive. (*Guide to LA FOIP*, Chapter 3, “Access to Records”, updated May 5, 2023 [*Guide to LA FOIP*, Ch. 3], p. 168)

[Emphasis added]

[18] An access to information request that is not made in good faith can amount to “an abuse of the right of access” if an applicant uses the access provision of LA FOIP in a way that is contrary to its principles and objects. The following factors should be considered by the local authority:

- Number of requests: is the number excessive.
- Nature and scope of the requests: are they excessively broad and varied in scope or unusually detailed. Are they identical to or similar to previous requests.
- Purpose of the requests: are the requests intended to accomplish some objective other than to gain access. For example, are they made for “nuisance” value, or is the applicant’s aim to harass the public body or to break or burden the system.
- Timing of the requests: is the timing of the requests connected to the occurrence of some other related event, such as a court or tribunal proceeding.
- Wording of the request: are the requests or subsequent communications in their nature offensive, vulgar, derogatory or contain unfounded allegations. Offensive or intimidating conduct or comments by applicants is unwarranted and harmful. They can also suggest that an applicant’s objectives are not legitimately about access to records. Requiring employees to be subjected to and to respond to offensive,

intimidating, threatening, insulting conduct or comments can have a detrimental effect on well-being.

(Guide to LA FOIP, Ch. 3, pp. 167-168)

[19] The local authority should address any of the above factors that apply. Depending on the nature of the case, one factor alone or multiple factors together can lead to a finding that a request is an abuse of the right of access. The focus should be on the cumulative nature and effect of the applicant’s behaviour.

Number of access requests

[20] There are three access requests being considered for disregard in this Decision. However, the RM outlined the history of access requests received from the Applicant to support its argument that the Applicant’s access requests were not made in good faith. The RM indicated that the Applicant made 14 access requests in 2023, and 10 requests between January 1st, 2024, and February 16, 2024. The RM added that on March 7, 2024, the Applicant had made an additional two requests. This is a total of 14 requests, to date, for 2024.

Nature and scope of access requests

[21] The RM provided my office with copies of access requests it has received over 2023 and 2024 to date from the Applicant. Based on a review of the access requests, some appear to be identical, or similarly worded, or they request the same type of records:

RM’s reference number	Access Request
02-2023	I request a copy of my full personnel file covering the period of time from the date of hire to date of termination.
07-2023	I request a copy of my full personnel file covering the period of time from the date of hire to date of termination.

RM’s reference number	Access Request
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05-2024	Order of Council approving Administration to contact ZEL Safety and SCSA to attempt to cancel [Applicant's] safety courses [they] personally booked with [their] personal credit card.
012-2024	ORDER OF COUNCIL AUTHORIZING ADMINISTRATION STAFF TO CANCEL SAFETY COURSES FOR [APPLICANT] THAT I PERSONALLY PAID FOR ON MY OWN MASTERCARD.

RM's reference number	Access Request
06-2023	I am requesting the insurance papers for the day the equipment (CAT dozer and Track Hoe) was moved, as well as the Minutes of the Meeting where Order of Council was passed allowing Councillor [Name] and Reeve [Name] to move this equipment in direct contravention of the Act.
06-2024	Order of Council approving emergency moving Track Hoe and CAT D9T on Nov. 2022. Cost of new batteries, repairs, diagnostics or SCRAPER resulting from boost attempt Nov. 2022. Insurance covering the emergency move of the heavy equipment listed herein.

Purpose of the requests

- [22] The RM provided my office with Canada Post tracking information for correspondence it sent to the Applicant via registered mail regarding several access requests (including the three access requests at issue in this Decision). However, the Applicant refused the registered mail on March 5, 2024, regarding 05-2024 and 07-2024. The Applicant also refused registered mail on March 26, 2024, regarding access request 09-2024. Earlier, I indicated the neglect or refusal to fulfill some duty is considered “not in good faith.” When engaging the formal process of access to information under LA FOIP, applicants must be willing to communicate with the local authority in order to gain access to records. By refusing the RM's mail, it would appear that the Applicant's objective is not to gain access to records.
- [23] The Applicant also refused to receive a copy of the RM's application to disregard the three access requests, as described in the background of this Decision. By refusing the RM's

registered mail, including the RM’s application to disregard, the Applicant has put themselves at a disadvantage. The Applicant is not able to provide rebuttal to the RM’s arguments.

[24] I note that in their submission, the Applicant alleged that the RM did not want to respond to the access requests:

All three of these requests are regarding my outstanding Harassment Grievance against Council and Administration staff which, in my opinion, are why they do not want to have to answer them.

[25] Contrary to what the Applicant has indicated, it appears that the RM has made efforts to meet its duties under LA FOIP. It is the Applicant who is refusing to correspond with the RM.

Wording of the requests

[26] The wording the Applicant’s access requests contains the Applicant’s grievances against the RM or criticisms of the RM. In some cases, it appears that the Applicant is not requesting records but is inserting their criticisms of the RM in the form of questions. Below are some examples of the Applicant’s access requests:

RM’s reference number	Access Request
06-2023	I am requesting the insurance Papers for the day the equipment (CAT dozer and Track Hoe) was moved, as well as the Minutes of the Meeting where Order of Council was passed allowing Councillor [Name] and Reeve [Name] to move this equipment <u>in direct contravention of the Act.</u>
12-2023	1) List of Accounts for Approval showing the payment(s) for the repairs on the Kenworth semi-truck owned by [Name] for the air bags, tires, and batteries purchased and installed. (2020) ([Name of companies]) 2) <u>How were these repairs handled – Did [Name] pay back the RM or did the RM pay for it?</u>

<p>13-2023</p>	<p>1) Order of Council approving [Name] and [Name] to attend to Provost to pick up the office trailer at the Cavelle [sic] shop. (2019)</p> <p>2) Was the insurance waived? (copy of insurance waiver)</p> <p>3) Indemnity payments made to both [Name] and [Name] for this trip</p> <p>4) Explanation as to why they went to get it, when there were two (2) employees who had Class 1. <u>Why were these employees not sent to pick it up?</u></p>
<p>2023-15</p>	<p>I wish to see the write-ups that were done regarding the incident of the Reeve, [Name], and Councillor [Name] when they went to employees, [name withheld]'s private residence and threatened [them] with the loss of [their] employment, as well as the write-up regarding the Administrator, [Name withheld], allegedly accusing [Name] of harassing [them]. I also want to see the minutes of the meeting(s) where the Council voted or discussed holding these individuals accountable for their actions.</p>
<p>17-2023</p>	<p>I am first asking for a written, complete, response to my statement submitted to Council on September 14, 2023. Next, <u>I want to know if banking [Name] hours while [they] were collecting EI Benefits caused the taxpayers to have payback CRA. When you are bonded, how does something like this happen?</u></p>
<p>05-2024</p>	<p>Order of Council approving Administration to contact ZEL Safety and SCSA to attempt to cancel [Applicant's] safety courses [they] personally booked with [their] personal credit card.</p>
<p>08-2024</p>	<p>Order of Council approving former Councillor [Name] and current Councillor [Name] <u>to contravene Sec 112 of The Municipalities Act</u> [sic] to work on repairs to the Massey tractor, December 2022.</p>
<p>12-2024</p>	<p>ORDER OF COUNCIL AUTHORIZING ADMINISTRATION STAFF TO CANCEL SAFETY COURSES FOR [Name] THAT I PERSONALLY PAID FOR ON MY OWN MASTERCARD.</p>

[Emphasis added in bold and underline]

[27] While it is normal and even expected for local authorities to be criticized by individuals, there appears to be a pattern of conduct in which the Applicant uses their access requests to air their grievances or criticisms of the RM through the wording of their access requests. The purpose of the formal access to information process under LA FOIP is for individuals to gain access to records. Individuals may even use LA FOIP to gain access to records to dispute decisions made by the local authority. However, the formal access to information process is not an avenue for individuals to air grievances. In [F2020-RTD-04](#), the Office of the Information and Privacy Commissioner of Alberta (AB IPC) described an airing of grievances through multiple access requests as an abuse of their right to make requests:

[27] In the circumstances of this case, the repetitious and systematic nature of the Applicant's access requests is an abuse of her right to make requests. The language used by the Applicant in some of her access requests includes various allegations of wrongdoing by the Public Body. In my view, some of these appear to be not only requests for information, but a means for the Applicant to air her grievances against the Public Body.

[28] The above factors, including the repetition and the wording of some of the access requests and the refusing to accept the RM's registered mail regarding the three access requests suggests that the Applicant's objectives are not legitimately about accessing records. If the Applicant truly wants access to records, they need to cooperate and communicate with the RM. This would include accepting registered mail from the RM. Therefore, I grant the RM's application to disregard access requests 05-2024, 07-2024, and 09-2024 received by the RM on February 16, 2024.

[29] Finally, I suggest that the RM email its correspondence to the Applicant regarding access to information requests going forward. This will help the RM overcome the issues discussed in this Decision regarding communicating with the Applicant.

III DECISION

[30] I grant the RM's application to disregard access requests 05-2024, 07-2024, and 09-2024 received by the RM on February 16, 2024.

Dated at Regina, in the Province of Saskatchewan, this 2nd day of April, 2024.

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