



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 037-2021

Rural Municipality of Pleasantdale No. 398

November 22, 2021

Summary:

The Applicant submitted an access to information request to the Rural Municipality of Pleasantdale No. 398 (RM). The RM responded by providing the Applicant with partial access to the records. It withheld other portions pursuant to sections 23(1)(k)(ii) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant also requested a reimbursement of the \$20 application fee based on the assertion that the information qualified as public information pursuant to section 117 of *The Municipalities Act*. The RM was not of the view that section 117 of *The Municipalities Act* had any application. The RM also indicated that it did not fully address the Applicant's request for a waiver of the application fee because it was under the impression it did not have to respond to the Applicant's request for reimbursement once my office was reviewing the issue. The Applicant requested the Commissioner review the RM's decisions. The Commissioner found that section 28(1) of LA FOIP applied to the withheld portions of the information. Although the RM indicated that the withheld information qualified as personal information pursuant to section 23(1)(k)(ii) of LA FOIP, the Commissioner found that section 23(1)(k)(i) of LA FOIP instead applied. The Commissioner did not find that section 3(1)(b) of LA FOIP had any application to the withheld information and that the Applicant's request did not meet the criteria for a fee waiver. The Commissioner recommended that the RM continue to withhold the information. The Commissioner also recommended the RM take no further action with regards to the application fee. The Commissioner further recommended the RM ensure it meet its duty to assist pursuant to section 5.1 of LA FOIP in the future by responding completely to applicants.

I BACKGROUND

- [1] On January 22, 2021, the Applicant made an access to information request to the Rural Municipality of Pleasantdale No. 398 (RM) for the following:

[RM Administrator]
Administrator resign letter

- [2] Also on January 22, 2021, the Applicant made the required payment of \$20 to the RM for services related to *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) access to information request.

- [3] Also on January 22, 2021, the RM advised that there was no applicable reference to provide information under section 117 of *The Municipalities Act*. The RM concluded that section 3(1)(b) of LA FOIP did not apply to the requested information on the basis that the information was not considered a matter of public record.

- [4] On January 26, 2021, the Applicant made a payment reimbursement request to the RM with the following message:

...I am requesting a refund of the \$20.00 you charged me for a LA FOIP request for the copy of the letter that Debra gave council. I have checked into this and this is a public document that has been presented to council and it did not require a form or payment...

- [5] On February 16, 2021, the RM responded to the Applicant's access to information request with the following:

Please find attached records responsive to your request. Please note that, pursuant to section 8 of *The Local Authority Freedom of Information and Protection of Privacy Act* (the Act), some of the information contained in the attached records has been deleted because if released would disclose information about an identifiable individual. Access to this information is denied pursuant to section 23(1) Section 23(1)(k)(ii) the disclosure of the name itself would reveal personal information about the individual, of the Act.

- [6] On February 17, 2021, my office received a request for review from the Applicant.

[7] On February 18, 2021, the Applicant confirmed the scope of the review with my office to include the following:

- Wanting exemptions that have been applied to the record reviewed
- Disagree that a fee should have been requested
- Disagree that a formal LA FOIP application was required to access records
- Duty to assist as Applicant's request for reimbursement went unanswered

[8] On February 26, 2021, my office provided notification to the Applicant and the RM of my office's intent to undertake a review of the RM's application of section 28(1) of LA FOIP in accordance with the definition of personal information set out in section 23(1)(k)(ii) of LA FOIP.

[9] Also on February 26, 2021, my office asked the RM to prepare a submission explaining the following:

how it determined that the requested records were not a matter of public record pursuant to section 3(1)(b) of LA FOIP, and could only be accessed by making a formal application to access information pursuant to section 6 and paying the \$20 application fee as per section 5(1) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations).

II RECORDS AT ISSUE

[10] This review concerns a one page resignation letter from a former administrator at the RM, with a received date of January 10, 2021. The RM severed information from this page pursuant to section 23(1)(k)(ii) of LA FOIP. However, section 23(1)(k)(ii) of LA FOIP is a definition provision. The appropriate section to have cited was section 28(1) of LA FOIP.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[11] The RM qualifies as a “local authority” as defined by section 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to review this matter.

2. Was the requested record a matter of public record pursuant to section 3(1)(b) of LA FOIP?

[12] Section 3(1)(b) of LA FOIP provides as follows:

3(1) This Act does not apply to:

...

(b) material that is a matter of public record;

[13] In its submission to my office, the RM stated the following:

I looked under the Municipalities Act Section 117 and saw no applicable reference to provide information. I asked [Applicant] to fill out the Access to Privacy Request and pay the applicable fee \$20.00 applicable fee as per Section 5(1) of LA FOIP regulations. LA FOIP 3(1)(b) does not apply as this is not considered a matter of public record.

[14] Section 117 of *The Municipalities Act* speaks to the public’s right to inspect and obtain copies of certain municipal records as follows:

117(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 municipality;

(b) the statements maintained by the administrator in accordance with section 142 and the debentures register;

(b.01) the official oaths or affirmations taken by members of council pursuant to section 94;

(b.1) the municipality’s financial statements prepared in accordance with section 185 and auditor’s report prepared in accordance with section 189(1);

(b.2) the financial statements of any controlled corporation prepared in accordance with section 187 and an auditor's report prepared in accordance with section 189(1);

(c) any report of any consultant engaged by or of any employee of the municipality, or of any committee or other body established by a council, after the report has been submitted to the council, except any opinion or report of a lawyer;

(d) the minutes of the council after they have been approved by the council; and

(e) any other prescribed report or document.

[15] In [Review Report 122-2014](#) at paragraph 19, I noted the following:

Virtually all documents in the possession or control of a local authority could be said to be public records. A *matter of public record* for purposes of section 3(1)(b) of LA FOIP relates to documents that members of the public already have access to".

[16] The record at issue in this review is a resignation letter and is not on the list of municipal records open to public inspection pursuant to section 117 of *The Municipalities Act*. I therefore do not find that section 3(1)(b) of LA FOIP has any application in the circumstances. I must next consider if the RM has authority under LA FOIP to withhold the portion of the record at issue in this review.

3. Did the RM properly apply section 28(1) of LA FOIP to the severed information?

[17] Section 28(1) of LA FOIP provides as follows:

28(1) No local authority shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 29.

[18] The RM applied section 28(1) of LA FOIP to the one page resignation letter indicating that the severed information qualified as personal information as defined at section 23(1)(k)(ii) of LA FOIP. Section 23(1)(k) provides as follows:

23(1) Subject to sections (1.1) and (2), "**personal information**" means personal information about an identifiable individual that is recorded in any form, and includes:

...

(k) the name of the individual where:

...

- (i) it appears with other personal information that relates to the individual; or
- (ii) the disclosure of the name itself would reveal personal information about the individual.

[19] In its submission to my office, the RM stated the following:

LAFOIP Sec 23(1)(k)(ii): applies as “the disclosure of the name itself would reveal personal information about the individual”

[20] The severed information is the name of another individual who is not the Applicant or the Administrator who submitted the resignation letter. The name, if released, would reveal who the Administrator had a conflict with that led to the resignation. The resignation letter suggests that the individual whose name was withheld was responsible for a hostile work environment with continued harassment. This information could constitute the individual’s employment history pursuant to section 23(1)(b) of LA FOIP. As this information was released, releasing the name now would associate the individual to the personal information already released. Although the RM withheld the name of the individual pursuant to section 23(1)(k)(ii) of LA FOIP, I find that the name of the individual qualifies as personal information pursuant to section 23(1)(k)(i) of LA FOIP. I recommend it continue to be withheld.

[21] For the information in the resignation letter that has already been released, it is not clear if the RM had the consent of the former Administrator to release their personal information. If the RM did not have consent, it should consider whether it had authority under section 10(g) of the LA FOIP Regulations. If not, it is possible the Administrator’s privacy may have been breached. If so, the RM should follow my office’s best practice steps outlined in [*Privacy Breach Guidelines for Government Institutions and Local Authorities*](#).

4. Do the circumstances exist to reimburse the application fee of \$20?

[22] Section 9(5) of LA FOIP provides as follows:

9(5) Where a prescribed circumstance exists, the head may waive payment of all or any part of the prescribed fee.

[23] The specific fee the RM charged is laid out in section 5(1) of the LA FOIP Regulations as follows:

5(1) An application fee of \$20 is payable at the time an application for access to a record is made.

[24] The Applicant requested a refund of the \$20 charged for a LA FOIP request as indicated in paragraph [3] of this Report.

[25] The prescribed circumstances under which the \$20 application fee can be waived are contained in section 8(1)(a) of the LA FOIP Regulations. Section 8(1)(a) of the LA FOIP Regulations provides:

8(1) For the purposes of subsection 9(5) of the Act, the following circumstances are prescribed as circumstances in which a head may waive payment of fees:

(a) with respect to the fees set out in subsection 5(1), if the application involves the personal information of the applicant;

[26] It appears the Applicant is requesting a fee reimbursement on the basis that the record requested is a public document that was presented to council, hence it did not require a form of payment. Based on my conclusion in paragraph [16] of this Report, the record requested does not qualify as a record open for public inspection, but even if it did, section 117(2) of *The Municipalities Act* provides that, “the administrator shall furnish the copies requested on payment of any fee that the council may fix”.

[27] Nonetheless, LA FOIP applies in this case and the information withheld is not the Applicant’s personal information, so section 8(1)(a) of the LA FOIP Regulations would not apply. I therefore find the circumstance to reimburse the \$20.00 application fee does not exist.

[28] In response to the Applicant's concern about the RM not addressing their request for an application fee reimbursement, the RM explained to my office that the access request was forwarded to my office before it had a chance to completely address the Applicant's request for a waiver. The RM indicated that it was under the impression it did not have to respond to the Applicant's request for reimbursement once my office was reviewing the issue. Since the RM has a duty to assist up to the day it receives the review notification email from my office and within 30 days of receiving a written access request, I recommend the RM ensure it meets its duty to assist pursuant to section 5.1 of LA FOIP in the future by responding completely to applicants.

[29] Furthermore, I recommend the RM take no further action with respect to the \$20 application fee.

IV FINDINGS

[30] I find that section 3(1)(b) of LA FOIP does not apply in these circumstances.

[31] I find that the RM properly applied section 28(1) of LA FOIP to the severed information.

[32] I find the circumstance to reimburse the \$20.00 application fee does not exist.

V RECOMMENDATIONS

[33] I recommend the RM continue to withhold the name on the resignation letter.

[34] I recommend the RM take no further action with regards to the \$20 application fee.

[35] I recommend the RM ensure it meets its duty to assist pursuant to section 5.1 of LA FOIP in the future by responding completely to applicants.

Dated at Regina, in the Province of Saskatchewan, this 22nd day of November, 2021.

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