



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 014-2022, 015-2022, 016-2022, 017-2022, 018-2022

Village of Neudorf

April 11, 2022

Summary: The Applicant made five access to information requests to the Village of Neudorf (Village) under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Village issued a fee estimate and the Applicant paid the requested deposit. However, the Village did not respond to the requests after this point. The Applicant filed five requests for a review. The Commissioner issued this Report finding that the Village was deemed to have refused access to the responsive records. The Commissioner recommended that the Village issue a decision in accordance with section 7 of LA FOIP within 30 days of the issuance of this Report. He also recommended that the responsive records be released to the Applicant, subject to any mandatory exemptions, at no cost to the Applicant, and that the Village return the deposit to the Applicant.

I BACKGROUND

- [1] On November 15, 2021, the Applicant made five access to information requests to the Village of Neudorf (Village) under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [2] The Village responded to the access to information requests by letter dated December 6, 2021, setting out an estimate of the fees. The Applicant paid the deposit of \$150.00 requested by the Village on December 10, 2021.
- [3] On January 25, 2022, the Applicant filed five requests for a review with my office claiming that the Village had not responded to the five access to information requests within the

legislative timelines. The Applicant also requested the return of the amount paid as a deposit.

[4] On February 8 and 11, 2022, my office wrote to the Village advising that if the responses were not provided by end of day on February 11, 2022, we would proceed with reviews on all five matters.

[5] As all five requests involve the same Applicant and the Village, my office decided to issue one notification of a review dealing with the five requests on February 14, 2022. The Village was invited to provide a submission regarding its failure to respond to the five requests as required by section 7 of LA FOIP. It was also invited to explain how the fee estimate was arrived at and whether it was reasonable. The Applicant was also invited to provide a submission on these issues.

[6] The Village did not provide a submission and to date it has not provided the Applicant with a response to their five access requests. The Applicant did not file a submission. Given that these reviews involve the same issues and parties, I am issuing one Report in relation to the five reviews.

II RECORDS AT ISSUE

[7] As these reviews consider whether the Village responded to the Applicant's requests in the timeline required by section 7 of LA FOIP and the fee estimate, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to conduct this review?

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

2. Did the Village meet the legislated timeline?

[9] Section 5 of LA FOIP states that an individual has a right to access records in the possession or under the control of a local authority if an access to information request is made. It provides:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a local authority.

[10] Section 7(1) of LA FOIP sets out how a local authority must respond to the access to information request. It states, in part:

7(1) Where an application is made pursuant to this Act for access to a record, the head of the local authority to which the application is made shall:

(a) consider the application and give written notice to the applicant of the head's decision with respect to the application in accordance with subsection (2); or

[11] Section 7(2) of LA FOIP requires a local authority to respond to an applicant within 30 days of receiving an access to information request.

[12] In calculating the due date for a response required by section 7(2) of LA FOIP, *The Legislation Act* establishes general rules that govern the interpretation of all statutory instruments in the province, including rules relating to the computation of time. As noted in my office's [Review Report 152-2020](#), applying section 2-28 of *The Legislation Act* to section 7(2) of LA FOIP, the due date for a response is calculated as follows:

- The first day the access request is received is excluded in the calculation of time.
- If the due date falls on a holiday, the time is extended to the next day that is not a holiday.
- If the due date falls on a weekend, the time is extended to the next day the office is open.
- As LA FOIP expresses the time in number of days, this is interpreted as 30 calendar days, not business days.

[13] Section 9(3) of LA FOIP provides that the time within which a local authority is to respond to an Applicant's request is suspended when a local authority issues a fee estimate. The time is suspended until the applicant notifies the local authority that they wish to proceed with the request and pays any deposit owing on the fee estimate. Sections 9(3) and (4) of LA FOIP provide:

9(3) Where an estimate is provided pursuant to subsection (2), the time within which the head is required to give written notice to the applicant pursuant to subsection 7(2) is suspended until the applicant notifies the head that the applicant wishes to proceed with the application.

(4) Where an estimate is provided pursuant to subsection (2), the head may require the applicant to pay a deposit of an amount that does not exceed one-half of the estimated amount before a search is commenced for the records for which access is sought.

[14] Applying section 9(3) of LA FOIP, the 30-day deadline for responding to the requests was suspended on the issuance of the fee estimate on December 6, 2021, and reactivated once the Applicant paid the deposit on December 10, 2021.

[15] Following the approach to the calculation of the 30-day response time set out above, the Village issued its fee estimate on the 11th day. Therefore, the 30th day to respond to the access requests would have been January 4, 2022. As the Village has not yet responded to the requests, I find that it did not meet the legislated timeline required by section 7(2) of LA FOIP.

[16] Section 7(5) of LA FOIP provides that if the local authority fails to respond pursuant to section 7(2) of LA FOIP, it is deemed to have refused to provide access. Section 7(5) of LA FOIP provides:

7(5) A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.

[17] The Village is deemed to have refused access to the records pursuant to section 7(5) of LA FOIP, and it has not provided a submission in this review to support claims that the responsive records or portions of records are exempt. To address this, I recommend that it

issue a response pursuant to section 7 of LA FOIP releasing the records, subject to any mandatory exemptions that may apply, within 30 days of issuance of this Report.

[18] My office's position is that information delayed is information denied. The Village's delay in this case undermines one of the main purposes of LA FOIP which is to enhance transparency and accountability of local government by providing individuals with access to information. During my office's review, the Village stated it has taken steps to address the staffing challenges that have made compliance with LA FOIP difficult. It also stated that it is actively working to develop policies and procedures, and training programs necessary to ensure compliance. The Village should review its processes and procedures to ensure they appropriately support compliance with LA FOIP and take steps to ensure that staff receive sufficient training.

3. Is the Village's fee estimate reasonable?

[19] Although the Village was invited to provide a submission on the reasonableness of its fee estimate, it did not do so. Therefore, I have no information before me to support the reasonableness of the fee estimate. In these circumstances, I cannot uphold the fee estimate, thus, I recommend below that the amount of the deposit be refunded to the Applicant. This is consistent with the approach taken by my office in the past including in my office's [Review Report 021-2021, 022-2021, 023-2021](#).

IV FINDINGS

[20] I find that the Village did not meet its obligations to respond to the Applicant's access to information requests within the timeline provided in section 7(2) of LA FOIP and that it is deemed to have refused to provide access.

[21] I find that the Village did not demonstrate that the fee estimate is reasonable.

V RECOMMENDATIONS

[22] I recommend that, within 30 days of the issuance of this Report, the Village: 1) provide a section 7 response to the Applicant (with a copy to my office) releasing the responsive records to the Applicant, subject to any mandatory exemptions, 2) begin a review of its access to information processes and policies and take steps to ensure that its staff receive sufficient training to support compliance with LA FOIP.

[23] I recommend that the Village return the deposit to the Applicant and release the responsive records at no cost.

Dated at Regina, in the Province of Saskatchewan, this 11th day of April, 2022.

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