



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 030-2023

Village of Milden

August 31, 2023

Summary: The Applicant requested records from the Village of Milden (Village). The Village responded to the Applicant's request indicating the records do not exist. The Commissioner found that the Village had conducted a reasonable search for responsive records and recommended the Village take no further action.

I BACKGROUND

[1] The Applicant stated that on December 16, 2022, they hand delivered an access to information request to the Village of Milden (Village) for the following records:

Copy of Council Meeting Minutes in which a resolution approved that a so-called Group Milden Memorial Rink and/or any individual(s) to collect rents for rental of the rink, and its facilities, then deposit those monies into a band account not of the Villages. Plus make expenditures without [sic] any approval and oversight from the elected council.

Copy of Council Meeting Minutes resolution in which Council approved [sic] that a so-called group The Milden Community Hall Committee could collect rents. Continued on Attached Appendix.

[2] On January 18, 2023, the Applicant emailed my office the following, indicating it was the Appendix attached to their request:

Copy of the Meeting Minutes of Council of the resolution setting the rental rates for the rink and its Artificial Skating surface located therein.

Copy of the Meeting Minutes of Council of the resolution setting the rental rates for any facility in and for the Village Community Hall.

Copy of the Meeting Minutes of the Council and/or any document approved by the council for sale of gasoline to villagers of Milden on a monthly credit plan.

Copy of Bylaw enacted by the Village Council setting out guidelines and rules for an independent body, so-called committee, individual or third party on how they can or can not [sic] make expenditures with monies collected by them from renting any Village owned facility.

Copy of the Village Year End Income Statement and Balance Sheet for the years 2019 to 2021.

Copy of the Council Approved Annual Village Budget for the year 2021.

Copy of Council Meeting Minutes of a resolution by council instructing its employee, an administrator, to alter the accounting forma [sic] from the standard method to using the computer Program to produce consolidated formats and change the then existing accounting records as far back as 2010 to the consolidated format.

- [3] On January 31, 2023, my office emailed the Applicant to clarify if the Village had partially responded to their request or if no response was provided. The Applicant responded on February 7, 2023 raising concerns with the Village's response including that the Village issued an invoice for \$30 (\$20 application fee and \$10 for copying 10 pages).
- [4] My office corresponded with the Village and the Applicant to address some of the Applicant's concerns. On March 17, 2023, the Village provided my office with a copy of a new section 7 decision letter that it mailed to the Applicant on March 20, 2023. The Village indicated some of the records do not exist and therefore, access was refused pursuant to subsection 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP)*.
- [5] On March 30, 2023, the Applicant advised that they wished to proceed with the review of search efforts for the responsive records.

[6] On March 31, 2023, my office notified the Village and the Applicant that my office would proceed with a review to consider whether or not the Village made a reasonable effort to search for records. My office also requested the Village provide an explanation as to why the Village is of the view that instead of charging and collecting the application fee pursuant to subsection 5(1) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) at the time the request was submitted, how it was authorized to do so after processing the Applicant's request. The Village indicated in its submission that it would waive the \$20 application fee. As such, there is no need to consider if it was authorized to do so for this request.

[7] On April 20, 2023, the Village provided its submission. The Applicant did not provide a submission.

II RECORDS AT ISSUE

[8] As this is a review of the Village's search efforts, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[9] The Village is a "local authority" pursuant to section 2(1)(f)(i) of LA FOIP. Therefore, I find I have jurisdiction to conduct this review.

2. Did the Village conduct a reasonable search for records?

[10] In its section 7 decision letter dated March 20, 2023, the Village responded pursuant to subsection 7(2)(e) of LA FOIP, which provides as follows:

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 Village outlined to the Applicant that the following records do not exist:

- Copy of the Meeting Minutes of Council of the resolution setting the rental rates for the rink and its Artificial Skating surface located therein.
- Copy of the Meeting Minutes of Council of the resolution setting the rental rates for any facility in and for the Village Community Hall.
- Any document approved by the council for sale of gasoline to villagers of Milden on a monthly credit plan.
- Copy of Bylaw enacted by the Village Council setting out guidelines and rules for an independent body, so-called committee, individual or third part [sic] on how they can or cannot make expenditures with monies collected by them from renting any Village owned facility.
- Copy of Council Meeting Minutes of a resolution by council instructing its employee, an administrator, to alter the accounting format from the standard method of using the computer program to produce consolidate formats and change the then existing accounting records as far back as 2010 to the consolidated format.

Copies of the Village Year end Income Statement and Balance Sheet for the years 2019 to 2021 have been included in the Synopsis of Annual Financial Statements sent with tax notices each year in June. Since you have misplaced these copies, additional copies of these synopsis' [sic] are still available at no charge. Please note that on the Synopsis, Statement 1 is the balance sheet and Statement 2 is the income statement.

A copy of the budget which includes capital and operating income for 2021 is also still available.

[12] Section 5 of LA FOIP provides as follows:

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.

[13] Section 5 of LA FOIP establishes a right of access by any person to records in the possession or control of a local authority subject to limited and specific exemptions, which are set out in LA FOIP (*Guide to LA FOIP*, Chapter 3, "Access to Records", updated May 5, 2023 [*Guide to LA FOIP*, Ch. 3], p. 3).

[14] Subsection 5.1(1) of LA FOIP requires a local authority to respond to an applicant's access to information request openly, accurately and completely. This means that local authorities should make reasonable effort to not only identify and seek out records responsive to an applicant's access to information request, but to explain the steps in the process. The threshold that must be met is one of "reasonableness". In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable (*Guide to LA FOIP*, Ch. 3, p. 12).

[15] The question is whether the local authority conducted a reasonable search. A "reasonable search" is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records reasonably related to the access to information request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances. Examples of information to support its search efforts that local authorities can provide to my office include the following:

- For personal information requests – explain how the individual is involved with the local authority (i.e., client, employee, former employee etc.) and why certain departments/divisions/branches/committees/boards were included in the search.
- For general requests – tie the subject matter of the request to the departments/divisions/branches/committees/boards included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches/committees/boards included in the search.
- Describe how records are classified within the records management system. For example, are the records classified by:
 - Alphabet
 - Year
 - Function
 - Subject

- Consider providing a copy of your organization’s record schedule and screen shots of the electronic directory (folders & subfolders).
- If the record has been destroyed, provide copies of record schedules and/or destruction certificates.
- Explain how you have considered records stored off-site.
- Explain how records that may be in the possession of a third party but in the local authority’s control have been searched such as a contractor or information management service provider.
- Explain how a search of mobile electronic devices was conducted (i.e., laptops, smart phones, cell phones, tablets).
- Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicate what key terms were used to search if applicable.
- Indicate the calendar dates each employee searched.
- Indicate how long the search took for each employee.
- Indicate what the results were for each employee’s search.
- Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see *Using Affidavits in a Review with the IPC*.

The above list is meant to be a guide. Each case will require different search strategies and details depending on the records requested.

(*Guide to LA FOIP*, Ch. 3, pp. 14-15)

[16] A statement by a local authority that a record does not exist does not imply that the record in question does not exist at all. It would not be possible for a local authority to make such a sweeping statement about the general existence of a record. The term “exist” in subsection 7(2)(e) of LA FOIP is a function of being possessed or controlled by the local authority to which the access request is being made. There are two circumstances where a response that records do not exist can occur: 1) the local authority searched and the search did not produce any records; or 2) the local authority does not have possession or control of the record (*Guide to LA FOIP*, Ch. 3, pp. 57-58).

[17] In other review reports (e.g., [Review Report 043-2022](#), [Review Report 004-2022](#)), I have also considered if public bodies have provided reasonable explanations for why records would not exist.

[18] The Village's submission provided the following regarding its search for records:

Please note that I personally did not create any of the records requested since I was hired as the administrator for the Village of Milden in June of 2009. After contacting the previous administrator, [name of previous Administrator], [they] substantiated my claim as [they] have no recollection either of there being any records for each of [the Applicant's] requests. I have also extensively searched the Village Office storage systems which include two vaults where the bylaw book and meeting minute storage is contained, along with electronic computer files looking for any records regarding the following requested items but have found that no records exist.

- Meeting minutes with resolutions setting rental rates for the Milden Memorial or the Milden Community Hall or minutes regarding any expenditures... both the Community Hall and Memorial rink were built in 1951 by local volunteers from both urban and rural communities through fund raisers and personal donations. To this day both buildings continue to be run by community appointed personal donations. To this day both buildings continue to be run by community appointed volunteers with the village only paying insurance.
- Meeting minutes regarding the sale of gas to villagers of Milden on a monthly credit plan.
- Meeting minutes where council instructed myself to alter accounting format to consolidated method. The Munisoft computer program was in place when I started working for the village and various financial reports are and can be generated as per Council's request. Council has never instructed myself to alter any accounting formats.
- Copies of a Synopsis of Annual Financial Statements have been included with tax notices each year in June for the years [the Applicant] has requested. Copies of these statements have been available for pick-up since January 21, 2023 but have never been picked up.
- A copy of the budget includes capital and operating income for 2021 has also been available since January 21, 2023.

[19] While the Village indicated that no records exist, it did identify responsive records for the last two items as follows:

- Synopsis of Annual Financial Statement - The Village advised our office that the Synopsis of Annual Financial Statements was mailed to the Applicant on June 30, 2023 at no cost, as these are included with tax notices each year but previous copies had been misplaced.
- Copy of budget including capital and operating income for 2021 - The Village noted that the copy of the budget was available, upon payment of copying charges which is not at issue in this review.

[20] As these records were located and apparently being made available to the Applicant, I do not need to consider them.

[21] This leaves me to consider the Village's search efforts for the first three items noted at paragraph [18], which I will discuss individually as follows:

- Meeting minutes with resolutions setting rental rates for the Milden Memorial or Milden Community Hall. In the Village's initial section 7 decision letter to the Applicant dated January 20, 2023, the Village stated, "the Village of Milden as Council does not appoint members to committees that run these facilities." Based on the Village's explanation, these facilities are operated by community appointed volunteers and are supported by fundraising and personal donations. It appears they have operated this way since 1951. It is not clear how the Village, then, would be involved in the setting of rental rates.
- Meeting minutes referring to the sale of gas to villagers of Milden on a monthly credit card - The Village's submission does not provide any explanation for why no records would exist for this item. The Village's submission included where it searched, including a vault that held meeting minute storage.
- Meeting minutes where council instructed the administrator to alter the accounting format to a consolidated method - In the Village's submission, the Administrator stated they were never instructed to do so and explained that various reports can be generated using the computer program utilized by the Village.

[22] In addition to the preceding, the Applicant also asked for a copy of a bylaw that sets out guidelines for committees, individuals or third parties on how they can or cannot make expenditures with monies collected by them from renting any Village owned property. The Village did not address this item in its submission; however, its search efforts do indicate that their search included a vault that held the bylaw book.

[23] The threshold for search is what is reasonable in the circumstances. There is also some onus on an applicant to express why they believe records in relation to certain items should exist, and the Applicant has not fully done so in this matter. Based on the details provided by the Village, I find the Village has conducted a reasonable search for responsive records. I recommend that the Village take no further action regarding the search for responsive records.

IV FINDINGS

[24] I find that I have jurisdiction to conduct this review.

[25] I find the Village has conducted a reasonable search for responsive records.

V RECOMMENDATION

[26] I recommend that the Village take no further action regarding the search for responsive records.

Dated at Regina, in the Province of Saskatchewan, this 31st day of August, 2023.

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