



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 084-2020, 085-2020, 086-2020, 088-2020, 090-2020, 091-2020, 092-2020**

### **Resort Village of Candle Lake**

**March 30, 2022**

**Summary:** The Applicant requested reviews of seven access to information requests they made to the Resort Village of Candle Lake (RVCL) on the issues of whether or not clarification was necessary to process the requests, if RVCL responded within the legislative timelines, if the requests were improperly deemed abandoned by the Applicant and if the Applicant's fee waiver request was improperly denied. The Commissioner found that the Applicant's seven access to information requests were compliant with section 6(1)(b) of *The Local Authority Freedom of Information and Protection of Privacy Act*. The Commissioner found RVCL did not meet the legislated timelines in processing the requests. The Commissioner also found RVCL did not properly deem the seven access to information requests abandoned. Finally, the Commissioner found RVCL properly collected the \$20.00 application fees from the Applicant. The Commissioner recommended that within 30 days of this Report being issued, RVCL process the seven requests charging no additional processing fees to the Applicant. The Commissioner also recommended that if RVCL does not follow the Commissioner's recommendation to process the seven access to information requests within 30 days of issuance of this Report, it refund the Applicant the \$20.00 application fees.

### **I BACKGROUND**

[1] On March 9, 2020, the Resort Village of Candle Lake (RVCL) received six access to information requests from the Applicant. RVCL received an additional access to information request from the Applicant on March 12, 2020. From a review of these requests and the information highlighted by the Applicant, they were requesting:

#### **Request #1 (RVCL-05) – Received March 9, 2020**

1. the documentation that formed the Affinity proposal accepted approximately 2 years ago ...
2. ... an opinion that exempts this proposal from the purchasing policy and bylaw which would suggest the it [sic] any contract is in existence for five years it must go to tenders? ...
3. At page 40 under services Affinity indicated Affinity is to provide monthly statements which will include image copies of all cancelled checks. I understand that this reflects the existing arrangement? Please confirm either way.

**Request #2 (RVCL-06) – Received March 9, 2020**

- I understand there is a committee in place (Dock, Boatlift and Watercraft committee?) which meets from time to time with respect to Bylaw 05-2018 to consider and or approve license application under Bylaw 05-2018.

Please provide me with the Council resolution creating that committee and the terms of reference for that committee as constipated by PART VI – COMMITTEES – under Bylaw 02-2016.

- **Please provide me with a true copy of the minutes of the Committee that would be filed with the RVCL as contemplated by s 64.8 and 64.9.**
- Please provide me with a copy of the contact information relating to the CSO report stating:

“The Mosher Park area dock/lift owners have been contacted to establish a meeting time/date as required to seek alternatives for the 2020 placement of docks in this area.”

- I understand that pursuant to the dock by law [sic] renewal invoices have been sent to all 11 dock permit holders which would include a Council member. Provide me with copies of any such renewal document or invoices and a list of persons to who they were sent and how many have chosen to renew by paying their bylaw renewal fee.

**Request #3 (RVCL-07) – Received March 12, 2020**

In anticipation of the RVCL Sp Mtg scheduled for **Wednesday, January 8** could you please provide me with the following background materials:

- i) true copies of existing bylaw(s) pertaining to the subject matter
- ii) true copies of policies, if any, pertaining to the subject matter
- iii) identify and relevant zoning provision and
- iv) relevant OCP provisions

2. In addition please provide me the names of the RVCL Park Operators and contact information for the principle(s) or partners. If the proprietor is a corporation, please provide a corporate profile indicating who the directors and principal shareholders might be.
3. I assume **an informational letter or invitation** went out to the RV Park owners notifying them of this meeting? Please provide a copy of any such letter/document and any enclosures.
4. **Is there any relevant correspondence on file from any of the proprietors?** I assume someone asked for this meeting or did this meeting idea originate with the RVCL? In other words why are we having a special meeting? What triggered it?
5. **Is there an Agenda.** If so please include it even if it is only in draft format?
6. Who are the agenda planners for this meeting?
7. **What revenue did the RV operates generate for the RVCL over the last 4 years?**
8. Please provide a copy of the relevant current business license together with application form completed by the RV park owners. If a 2020 licenses been applied for please provide me with a copy of the application and license, if approved.

Please provide me with any contact information with respect to the various RV park owners if it is not included in the above information.

**Request #4 (RVCL-01) – Received March 9, 2020**

1. The employment agreement in paragraph 1 a) has a triggering provision.

Either the employer or employee can request i.e. make a move, to open renewal discussions. If neither party makes a move to open discussions and nothing is done prior to the event date (+/- July 31), then the contract is at an end. Is there any authorized aka legal correspondence from the RVCL to the employee or any correspondence or documentation from the employee to the employer the RVCL, triggering the need to enter discussions at this point in time? Please advise how this got onto the agenda. I do note the employee as well as the Chair, has a significant role in preparing the agenda: see Schedule A Bullet #9. Sticking the employment contract in the agenda without a trigger is not in my respectful opinion, proper, appropriate, ethical a legal notice under Section 1. A)?

**However having said that and while waiting for clarification, I have the following requests for related and relevant information in anticipation that this matter might go forward on March 13:**

2. The March 13<sup>th</sup> 2020 RVCL in camera agenda has an item described as:

#### 1.4 page 25 CAO employment agreements

3. There is no information or documentation enclosed other than an employment agreement signed on the 4<sup>th</sup> day of December.
4. Schedule A, bullet #9 of that Agreement states that among other duties the administrator will ensure that “.....*issues requiring the attention of Council are brought forward in a timely manner and that all background information or documentation is available to facilitate informed decision-making.*”
- 4 In keeping with the above, as well as my Oath of Office, and statutory duties imposed by the *Municipalities Act* section 92 and having regard to the provision that with respect to the Administrators at section 127, the Municipalities Act specified matters that must be dealt with by Council and that Council cannot delegate. There is included in this not delegation provision a reference to Council’s powers “...*to appoint suspender or dismiss an administrator....*”
- 5 In keeping with the above and having reviewed the existing employment agreement can you please provide me, your Council member, [Applicant], the following:
  - 5.1 A copy of the three month performance review – see para. 12 a) i). I cannot find any record nor is any Council resolution which verified that the administrator, in this case, successfully completed [their] probation? As the record stands [they] is still on probation ie subject to a probationary review?
  - 5.2 A copy if the November 1s Annual performance review for 2018 and 2019 as per paragraph 12 a) i)
  - 5.3 A statement showing what salary increments, if any, over and above the \$87,000 that may have been awarded pursuant to 12 a) i). Please include the date of the award, the amount of the increment awarded, if any, and a copy of the council resolution approving the same if awarded.
  - 5.4 Copy of the minute of all the “...*regularly scheduled meetings held to review operations, communication expectations, advise(sic) on policy or procedural changes, share information of general interest to the team.*”
  - 5.5 Copies of all monthly report regarding Village operations the administered and prepared and presented to council. See bullet # 10. I have not to my knowledge seen any?

Except for possibly the performance reviews, all of the documents requested are likely section 117 documents and there should be no problem producing the same.

...

#### **Request #5 (RVCL-02) – Received March 9, 2020**

...

Please provide, in a timely fashion, the items below so I can review these in detail, as part of my due diligence ....

...

1. Page 92 & 95 Bank **Reconciliation:**

- 1.1 **Item Ch 11701** please provide me the working papers and support documentation including copies of invoices and cheques to support the reconciliation treatment proposed on item 25/04/2019 CH 11701 Pandila & Co AP 4 2019-00104 **\$7,276.99CR**
- 1.2 **Item Ch 11771** please provide me with the working papers and support documentation that would support the reconciliation treatment proposed including copies of invoices and cheques form item 27/05/2019 CH 11771 Nicola A. Sawchuk 2019-00139 **\$3,500.00CR**

**Please confirm my understanding from discussions at the last meeting derived from information received (from the Admn.), that “Cr” means the account and cheque for the account has been issued and paid in both of these case [sic] before they came to Council. In the case of Ch 1170 this was APRIL 25 and CH 11771 May 27 2019.**

...

2. Page 97 List of **Accounts for Approval**

- 2.1 cheque 11771 27/05/2019 Nicola A Sawchuk Legal \$3,500.00

In reviewing the accounts submitted by legal counsel in the Incamera [sic] agenda I cannot see where the lawyer billed (rendered an account to) the RVCL for \$3500 or where that amount for legal services has ever come up in from of council for consideration and or approval. Please provide Nicola’s account for this amount and all resolutions and related papering including email exchanges that would support and or justify council and I approving this undocumented payment to legal counsel.

**Request #6 (RVCL-03) – Received March 9, 2020**

1. On July 17 I received a letter (Management Representation Letter [MRL]) and the 2018 FS purporting to be signed off by the RVCL as at June 14. I was deeply troubled and immediately made a request for the mandatory supporting resolution.- see attachment.
2. The signatories for the RVCL are the Mayor and Admn. I asked for copies of the resolutions approving the RVCL has signed off on a MRL & FS. I did so because I was shocked to find out the RVCL has signed off on a MRL & FS. On June 14 which had never come to Council. The Council saw drafts of the MRL & FS on June 14. There were errors in both and representations that were not true.
3. On July 17 I got the signed off June 14 MRL and FS. On July 1, like the rest of the Council I expect, were still waiting for the corrected copies to come back to Council for review with the Auditor and for the RVCL Council to pass the same if they were in order.

4. I could not locate any support for the June MRL and FS in the RVCL resolutions in any of my minutes of the RVCL during or after June 14. I was at all relevant meetings. The signed off June 14 versions never came to Council. There were no motions passes where the RVCL approved the signing of the June 14 MRL & FS as circulated on July 17 or resolution authorizing these to be signed off by Mayor and Administrator.
5. Considering the meeting with the Auditor was at Candle Lake 80 some klm [sic] from [Auditor] office, the June 14 MRL & FS clearly could not have existed on June 14. The only version in existence at that time was a draft which was never approved by Resolution of Council at a Meeting duly called and at which a quorum was present to approve the June 14 MRL an dFS [sic] as circulated. Nor was anyone approved to signed i.e. there was no resolution delegating the RVCL signing authority 9if in fact could be legally done in the case of MRLs and FSs).
6. **Page 2 of the FS of June 14 at page 2 states:**  
*Approved on behalf of the Mayor and Council* – where after the signature of the Mayor and Admn. appear.

I was there for the whole meeting. There is no record of this happening in the meeting. In any event that statement does not make sense. This is the FS of the RVCL not the “Mayor and Council” – *Approved on behalf of the Mayor and Council* is a silly statement at best.

7. **All that ever came to Council were drafts and those Drafts were not approved because they had errors and the Auditor needed to make changes.** The draft was never approved. The final version which is different than the draft was never approved as final by the RVCL Council.

I am enclosing some sections of [*The Municipalities Act*] which you may find appropriated [sic] to review.

**I suspect as [*The Municipalities Act*] requirement of the Auditor to send a copy of the 2018 FS to the Minister has happened. I want, as I did in the last Audit (2017), the Minister to know that I did not participate in the lie. I am therefore copying GAS so the Minister’s staff can be informed and so I can stay clean on this.**

**Request #7 (RVCL-04) – Received March 9, 2020**

I see there is work being done on the Westside Trail which is very positive for the community....

I have a compliance concern.

I don’t recall the work (procurement of the improvement to the trail) coming up for public tender. Can you please send me the resolutions, public tender documents etc. relating to the work being don on the trail.

...

On 2019-09-27 I requested the papering of the procurement documents for the West Side Trail Improvements.

I received on Friday Oct 4

1. Reso 434/2018
2. Page 3 of Bid Form - \$92,693.88 1 page but not the other pages – contractor not identified
3. Contract documents by Associated Engineering Oct 2018-25 pages

**and nothing else.**

Thank you for these but I will need and there simply must be more.

- Where is the resolution awarding the bid?
- Was there more than one bid?
- Where is the listing of the bids?
- When did council convene to consider the bid(s)?

Please provide me in a timely fashion with

1. the complete document for 3 above
2. any supplementary documents that attach doc 3
3. The bid list at the time of closing as at 2:01, Nov2 2018
4. The engineers [sic] recommendation if any as to the bid(s) received
5. Council resolution considering and awarding the contract
6. Listing of payments made to the unnamed contractor with supporting invoices and engineers sign off on payment(s)
7. Copies of all requests for advance/payment on the contract past current and future as the case may require

[2] On March 19, 2020, RVCL sent the Applicant seven separate clarification letters for each of these requests. Each of the seven clarification letters advised the Applicant, in part:

...

Once you provide our office with the details enabling us to clarify your request, we will proceed with processing your access request. This notification has been provided pursuant to subsection 6(3) of *The Local Authority Freedom of Information and Protection of Privacy Act*.

...

[3] The Applicant requested a review by my office of Request #1 on April 4, 2020, Request #s 2, 4, 5, 6, 7 on April 8, 2020 and Request #3 on April 12, 2020. In each of the seven requests for review, the Applicant cited the reason for the reviews as:

- I have been refused access to all or part of the record.
- I have not received a reply to my application ...
- I disagree with the decision not to grant my fee waiver.

[4] Through my office's early resolution process, the scope of each of the seven reviews were defined as follows:

1. [RVCL] did not adhere to the legislative timelines and respond to the access request within 30 days pursuant to subsection 7(2) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), and as such, access was deemed to have been refused pursuant to [section] 7(5) [of LA FOIP].
2. Clarification sought by the [RVCL] pursuant to section 6(3) [of LA FOIP] was not necessary in order to process these requests, additionally clarification was sought after the 30-day response period had expired.
3. These requests were improperly deemed abandoned pursuant to section 7.1 [of LA FOIP], as requests for clarification were sent April 30, 2020 but backdated to March 19, 2020, and the requests were then deemed abandoned on May 5, 2020.
4. [RVCL] improperly denied the applicant's request for a waiver of fees.

[5] On May 5, 2020, my office notified RVCL and the Applicant that my office would be undertaking the seven reviews of these matters and invited both parties to make a submission. The notification email advised the Applicant and RVCL that the above-noted four issues would form the scope of the seven reviews.

## **II RECORDS AT ISSUE**

[6] As these reviews consider procedural issues, there are no records at issue.

## **III DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction?**



[7] RVCL is a “local authority” pursuant to section 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Therefore, I have jurisdiction to undertake these reviews.

**2. Was clarification of the Applicant’s requests necessary?**

[8] I would like to note that RVCL entered into an agreement with consulting firm, Cenera, to process these requests on its behalf. In addition, the submission for these reviews were prepared by Cenera for RVCL.

[9] Section 6 of LA FOIP sets out the requirements of an applicant when making an access to information request. Section 6 of LA FOIP provides:

**6(1)** An applicant shall:

(a) make the application in the prescribed form to the local authority in which the record containing the information is kept; and

(b) specify the subject matter of the record requested with sufficient particularity as to time, place and event to enable an individual familiar with the subject-matter to identify the record.

(2) subject to subsection (4) and subsection 11(3), an application is deemed

(3) Where the head is unable to identify the record requested, the head shall advise the applicant, and shall invite the applicant to supply additional details that might lead to the identification of the record.

(4) Where additional details are invited to be supplied pursuant to subsection (3), the application is deemed to be made when the record is identified.

[10] Section 6 of LA FOIP provides direction for applicants who wish to make an access to information request to a local authority. The access to information request should be prepared in a way that enables the local authority to provide access to what has been requested (*Guide to LA FOIP*, Chapter 3: “Access to Records”, updated June 29, 2021, (*Guide to LA FOIP*, Ch. 3.) p. 20).

- [11] While an applicant does not have a statutory duty to assist a local authority with responding to their request under LA FOIP, the applicant should make a reasonable effort to assist the local authority in responding accurately and completely. Section 6(1)(b) of LA FOIP is intended to ensure that applicants provide sufficient particularity to make it possible for the local authority to identify the record being requested. Applicants must be clear and provide parameters (i.e. timeframe, place and event). Specific and precise access requests enable local authorities to respond more quickly and cost effectively. This avoids the delay often entailed when all-encompassing or imprecise access requests are made. Applicants, therefore, have an incentive to cooperate with local authorities by, whenever reasonably possible, making clear, specific and not unnecessarily broad access requests (*Guide to LA FOIP*, Ch. 3. pp. 22-23).
- [12] Where the head cannot identify a record because of a vague request, the applicant will be asked to provide more detail. If an applicant wishes to maintain a broad request, it is an applicant's right to do so. However, applicants should be aware that a broad access request may involve fees. Narrowing a request, therefore, may result in a smaller fee. Local authorities should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of LA FOIP. Generally, ambiguity in the request should be resolved in the applicant's favour. To be considered responsive to the request, records must "reasonably relate" to the request. Where an access to information request is unclear or lacks sufficient detail to identify the record, the local authority must provide the applicant with the opportunity to provide more detail. Contact with the applicant to clarify the request should occur as soon as possible (*Guide to LA FOIP*, Ch. 3. pp. 23-24).
- [13] Where a local authority needs to request additional details from an applicant, the 30 day deadline for a local authority to respond pursuant to section 7(2) of LA FOIP does not start until the head can identify what record(s) the applicant is requesting. In other words, until the necessary clarification is received, the 30 day clock has not started (*Guide to LA FOIP*, Ch. 3. p. 25).
- [14] The requirements set out in section 6(1)(b) of LA FOIP is not unique to Saskatchewan. Other Canadian jurisdictions have a similar provision to section 6(1)(b) of LA FOIP.

Section 24(1)(b) of Ontario's [Freedom of Information and Protection of Privacy Act](#) provides:

24(1) A person seeking access to a record shall,

...

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record ...

[15] Similarly, section 5(1)(a) of British Columbia's [Freedom of Information and Protection of Privacy Act](#) provides:

5(1) To obtain access to a record, the applicant must make a written request that

(a) provides enough detail to enable an experienced employee of the public body, with a reasonable effort, to identify the record sought,

[16] Finally, section 6 of Canada's federal [Access to Information Act](#) provides:

6 A request for access to a record under this Part shall be made in writing to the government institution that has control of the record and shall provide sufficient detail to enable an experienced employee of the institution to identify the record with a reasonable effort.

[17] In my office's [Disregard Decision 040-2022, 041-2022, 042-2022](#), I observed the following:

[50] The courts have considered an applicant's obligation to provide "sufficient particulars". The Federal Court in considering an equivalent provision in the [Access to Information Act](#) stated that section 6 "imposes an obligation on the applicant to state precisely what he is seeking and a corresponding obligation is imposed on Canadian institutions to make all efforts to locate and identify documents relevant to the request" (*X v. Canada (Minister of National Defence)*, (T.D.) [1992] 1 F.C. 77 at para 13). Further, there must be a degree of specificity in a request for documents, but only to the extent that the document or record requested is reasonably identifiable (*Horseman v. Canada (Minister of Indian Affairs and Northern Development)*, T-2863-86, decision dated March 30, 1987, F.C.T.D., not reported).

[51] In my view, the requirements of LA FOIP on both applicants and local authorities in combination with the purposes of the Act demonstrate an intention on the part of the Legislature that an individual's access requests will be processed by the local authority in a fair, reasonable, open, and flexible manner (Ontario Information and Privacy

Commissioner [Order MO-2063](#) at p. 5 and Nova Scotia Information and Privacy Commissioner [Review Report 16-05](#) at para [23] likewise described this obligation on public bodies).

[18] I have reviewed each of the seven access to information requests and have summarized the clarification steps as follows. I will note that for each of the Applicant's requests, they have completed the access to information request form and then attached previous emails or correspondence that details background and what the Applicant is requesting. It appears from the attachments that the Applicant had first attempted to request the information informally (outside of LA FOIP). However, it appears that the Applicant has been unsuccessful in receiving what they have requested.

[19] In response to these requests, Cenera sent seven clarification letters on behalf of RVCL to the Applicant dated March 19, 2020. Each of these letters provided a listing of what they believed the applicant was requesting:

**Clarification Letter – Request #1**

...

After reviewing the materials provided, we identified the following as items that may be considered “records” based off of the following portions of the materials you provided:

- “the documentation that formed the Affinity proposal accepted approximately 2 years ago”
- “...an opinion that exempts this proposal from the purchasing policy and bylaw which would suggest the it [sic] any contract is in existence for five years it must go to tenders? Is there an exemption that I am missing?”
- “At page 40 under services Affinity indicates Affinity is to provide monthly statements which will include image copies of all cancelled checks. I understand that this reflects the existing arrangement? Please confirm either way.”

A copy of your request has been enclosed for your reference.

A request pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* is a records-based process, not information-based. In order for your request to be processed, our office requires additional details to identify the records you are requesting. Therefore, please provide our office with a **clear listing of items** you are requesting.

...

### **Clarification Letter – Request #2**

...

After reviewing the materials provided, we identified the following as items that may be considered “records” based off of the following portions of the materials you provided:

- “Please provide me with the Council resolution creating that committee and the terms of reference for that committee as constipated [sic] by PART VI – COMMITTEES – under Bylaw 02-2016”
- “Please provide me with a true copy of the minutes of the Committee that would be filed with the RVCL as contemplated by s 64.8 and 64.9”
- “Please also forward the Chair and Administrator’s LAFOIP justification for allocation of the 2 Privacy Commissioners reports to the in-camera agenda”
- “Please provide me with a copy of the contact information relating to the CSO report stating: ‘The Mosher Park area dock/lift owners have been contacted to establish a meeting time/date as required to seek alternatives for the 2020 placement of docks in this area.’”
- “Provide me with copies of any such renewal document or invoices and a list of persons to who they were sent and how many have chosen to renew by paying their bylaw renewal fee”

A copy of your request has been enclosed for your reference.

A request pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* is a records-based process, not information-based. In order for your request to be processed, our office requires additional details to identify the records you are requesting. Therefore, please provide our office with a **clear listing of items** you are requesting.

...

### **Clarification Letter – Request #3**

...

After reviewing the materials provided, we identified the following as items that may be considered “records” based off of the following portions of the materials you provided:

- “true copies of existing bylaw(s) pertaining to the subject matter”
- “true copies of policies, if any, pertaining to the subject matter”
- “identify and relevant zoning provisions and”
- “relevant OCP provisions”
- “In addition, please provide me the names of the RVCL Park Operators and contact information for the principle(s) or partners. If the proprietor is a corporation, please provide a corporate profile indicating who the directors and principal shareholders might be”

- “I assume an informational letter or invitation went out to the RV Park owners notifying them of this meeting? Please provide a copy of any such letter/document and any enclosures”
- “Is there any relevant correspondence on file from any of the proprietors?...In other words why are we having this special meeting? What triggered it?”
- “Is there an Agenda. If so please include it even if it is only in draft format?”
- “Who are the agenda planners for this meeting?”
- “What revenue did the RV operates generate for the RVCL over the last 4 years?”
- “Please provide a copy of the relevant current business license together with application form completed by the RV park owners. If a 2020 licenses been applied for please provide me with a copy of the application and license, if approved”
- “Please provide me with any contact information with respect to the various RV Park owners if it is not included in the above information”

A copy of your request has been enclosed for your reference.

A request pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* is a records-based process, not information-based. In order for your request to be processed, our office requires additional details to identify the records you are requesting. Therefore, please provide our office with a **clear listing of items** you are requesting.

...

#### **Clarification Letter – Request #4**

...

After reviewing the materials provided, we identified the following as items that may be considered “records” based off of the following portions of the materials you provided:

- “Is there any authorized aka legal correspondence from the RVCL to the employee or any correspondence or documentation from the employee to the employer the RVCL, triggering the need to enter discussions at this point in time? Please advise how this got on the agenda.”
- 4.4 page 25 CAO employment agreements.”
- “A copy of the three month performance review”
- “a copy of the November 1st Annual performance review for 2018 and 2019 as per paragraph 12 a) i)”
- “A statement showing what salary increments, if any, over and above the \$87,000 that may have been awarded pursuant to 12 a) i). Please include the date of the award, the amount of the increment awarded, if any, and a copy of the council resolution approving the same if awarded.”

- “A copy of the minutes of all the ‘...regularly scheduled meeting held to review operations, communication expectations, advise(sic) on policy or procedural changes, share information of general interest to the team.”
- “Copies of all monthly report regarding Village operations the administrator prepared and presented to council. See Bullet #10”

A copy of your request has been enclosed for your reference.

A request pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* is a records-based process, not information-based. In order for your request to be processed, our office requires additional details to identify the records you are requesting. Therefore, please provide our office with a **clear listing of items** you are requesting.

...

### **Clarification Letter – Request #5**

...

After reviewing the materials provided, we identified the following as items that may be considered “records” based off of the following portions of the materials you provided:

- “..copy of the \$7,276.99 cheque no 11701 dated April 25”
- “1. Page 92 & 95 Bank Reconciliation:”
- “1.1 Item Ch 11701 please provide me the working papers and support documentation including copies of invoices and cheques to support the reconciliation treatment proposed on item 25/04/2019 CH 11701 Pandila & Co AP 4 2019-00104 \$7,276.99”
- “1.2 Item Ch 11771 please provide me the working papers and support documentation that would support the reconciliation treatment proposed including copies of invoices and cheques for item 27/05/2019 Ch 11771 Nicola A. Sawchuk 2019-00139 \$3,500.00”
- “the ‘Cr’ means the account and cheque for the account has been issued and paid in both of these cases before they came to Council” *\*not a record, but is most likely a question that can be answered*
- “2 page 97 List of Accounts for Approval”
- “2.1 cheque 11771 27/05/2019 Nicola A Sawchuk Legal \$3,500.00.”
- “Please provide Nicola’s account for this amount and all resolutions and related papering including email exchanges that would support and or justify council and I approving this undocumented payment to legal counsel.”
- “Can you please provide me with the municipal resolution, engagement letter or retainer agreement with the Pandila office.”

A copy of your request has been enclosed for your reference.

A request pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* is a records-based process, not information-based. In order for your request to be processed, our office requires additional details to identify the records you are requesting. Therefore, please provide our office with a **clear listing of items** you are requesting.

...

#### **Clarification Letter – Request #6**

...

After reviewing the materials provided, we identified the following as items that may be considered “records” based off of the following portions of the materials you provided:

- “Copies of the resolutions approving the RVCL signing of the MRL & FS”
- “Opening letter signed June 14, 2019 by Mayor & Administrator. Please provide me with
- this RVCL Council Reso. Authorizing the Mayor & Admin to sign off the F.S.”

A copy of your request has been enclosed for your reference.

A request pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* is a records-based process, not information-based. In order for your request to be processed, our office requires additional details to identify the records you are requesting. Therefore, please provide our office with a **clear listing of items** you are requesting.

...

#### **Clarification Letter – Request #7**

...

After reviewing the materials provided, we identified the following as items that may be considered “records” based off of the following portions of the materials you provided:

- “Can you please send me the resolutions, public tender documents etc. relating to the work being done on the trail.”
- “On 2019-09-27 I requested the papering of the procurement documents for the West Side Trail Improvements...
  - Where is the resolution awarding the bid?
  - Was there more than one bid?
  - Where is the listing of the bids?
  - When did council convene to consider the bid(s)?”
- “Please provide me in a timely fashion with
  - The complete document for 3 above
  - Any supplementary documents that attach doc 3
  - The bid list at the time of closing as at 2:01, Nov 2 2018



- The engineers recommendation if any as to the bid(s) received
- Council resolution considering and awarding the contract
- Listing of payment made to the unnamed contractor with supporting invoices and engineers sign off on payment(s)
- Copies of all request for advance/payment on the contract past current and future as the case may require”

A copy of your request has been enclosed for your reference.

A request pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* is a records-based process, not information-based. In order for your request to be processed, our office requires additional details to identify the records you are requesting. Therefore, please provide our office with a **clear listing of items** you are requesting.

...

[20] In its submission, RVCL asserts:

... the RVCL sought clarification from the Applicant on March 19, 2020. The OIPC discussed this issue concerning the RVCL in [Review Report 049-2019](#) in which the following was provided [at paragraph [43]:

When a local authority receives an access request that is in the form of a question or a series of questions, it must still determine what records it has that may be responsive to the questions. This position is also taken by the ON IPC. In Order MO-2285, the ON IPC provided as follows:

In short, institutions that receive a request for access that is in the form of a question or series of questions must determine what records they have that may be responsive to the questions and provide an access decision based on those records. This duty is the same regardless of the nature of the information sought.

While the RVCL agrees with this motion, LA FOIP’s duty to assist found in section 5.1(1) provides that a local authority shall respond to an application “openly, accurately and completely”. After a lengthy discussion between the Consultant and the RVCL Administrator, the decision was made to clarify the request with the Applicant, which included outlining sections of his request believed to be records-based. The RVCL is a municipality pursuant to *The Municipalities Act*, which allows certain records to be available for public review outside of the process set out in LA FOIP. As a Councillor for the RVCL, the Applicant is acutely aware of the types of records that the RVCL maintains as part of its business practice, however refused to have a discussion with the Consultant in regards to [Applicant] requests ....

[21] I would like to note that RVCL was also the local authority at issue in the aforementioned [Review Report 049-2019](#).

- [22] From a comparative review of the Applicant's seven access to information requests and the details RVCL laid out in the seven March 19, 2020 clarification letters, the clarification letters summarized what the Applicant was requesting in each of the seven requests. It is also clear that RVCL indicated in each letter that it had identified items that may be considered "records".
- [23] From my office's review, RVCL was able to determine from each of the Applicant's requests what they were requesting. The proof of this is that RVCL reproduced what the Applicant was requesting in the seven clarification letters. Thus, I am satisfied that the Applicant did provide "sufficient particulars" in their requests, making the clarification letters unnecessary. Clarification letters should be to clarify and not to repeat what the Applicant was asking for.
- [24] By sending the seven clarification letters rather than responding to the seven requests, RVCL created unnecessary delays.
- [25] I find that the Applicant's seven access to information requests were compliant with section 6(1)(b) of LA FOIP. As such, RVCL did not require clarification in order to identify the records and respond to the Applicant's seven requests.

**3. Did RVCL respond to the seven requests within the legislated timelines?**

- [26] Section 7(2) of LA FOIP provides the time in which a local authority shall respond to an access to information request and the way in which a head shall respond to the request. Section 7(2) of LA FOIP provides:

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

(a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;

(b) if the record requested is published, referring the applicant to the publication;

(c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;

(d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;

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

(f) stating that confirmation or denial of the existence of the record is refused pursuant to subsection (4); or

(g) stating that the request has been disregarded pursuant to section 45.1, and setting out the reason for which the request was disregarded.

[27] There are some other time factors that come into play in regard to the 30-day response time such as when an estimate of costs is provided to an applicant pursuant to section 9 of LA FOIP or a 30-day extension of time notification is provided to an applicant pursuant to section 12 of LA FOIP.

[28] In its submission, RVCL asserts:

The Resort Village of Candle Lake received 7 Access to Information Requests from the Applicant on March 9, 2020 for requests 1 to 6 and March 12 for request number 7. The 7 requests were forwarded to the Consultant by the RVCL Administrator on March, 17, 2020. After review of the requests the Consultant felt that the Applicant was not clear in the records he was requesting, and drafted an outline of the types of records that the Consultant believed the Applicant to be requesting, and forwarded the outline to the Administrator. The Administrator reviewed the outline and agreed that clarification needed to be sought. On March 19, 2020, clarification letters were forwarded to the Applicant via e-mail. Subsection 6(3) of the Act provides the following:

6(3) Where the head is unable to identify the record requested, the head shall advise the applicant, and shall invite the applicant to supply additional details that might lead to identification of the record.

Subsections 6(4) and 7(2) of LA FOIP provides:

6(4) Where additional details are invited to be supplied pursuant to subsection (3), the application is deemed to be made when the record is identified.

...

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

...

On March 28, 2020, the Consultant reached out to the Applicant via e-mail in regards to the Clarification requests. The Applicant did not respond to the Consultant. On April 2 and April 14, 2020, the Consultant had still not heard from the Applicant, and attempted to contact the Applicant via the telephone number provided on his requests. These calls did not go through, and so the Consultant attended to a post office and mailed out copies of the letters to the Applicant via registered mail. The package was returned to the Consultant's head office in Calgary marked "return to sender" in bold black and red ink on May 1, 2020. Further, following direction from the OIPC to re-draft the Clarification letters and have them signed by the Mayor instead of the Consultant, the Clarification letters were again sent to the Applicant on April 30, 2020.

The RVCL submits that it responded to the Applicant by requesting clarification within the 30 day timeline, therefore the response was not a "deemed refusal".

[29] I would like to note that Request #7 was date stamped as received by RVCL on March 9, 2020 and not March 12, 2020.

[30] As outlined in the previous question, I have found that the clarification letters sent to the Applicant were not necessary because based upon the contents of the seven clarification letters, RVCL clearly was aware of what the Applicant was requesting. As such, the 30-day clock started when the requests were received by RVCL.

[31] Request #s 1, 2, 4, 5, 6 and 7 were received by RVCL on March 9, 2020. The due date for responses for these requests was April 8, 2020. Request #3 was received by RVCL on March 12, 2020. The due date for a response for this request was April 13, 2020.

[32] Throughout the 30 day response time, RVCL was sending out clarification letters and follow-ups to clarification letters, rather than processing and responding to the requests.

[33] When a local authority does not respond within the legislated 30 day response time, a request is deemed to be refused pursuant to section 7(5) of LA FOIP, which 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.

[34] Therefore, the Applicant's requests were considered deemed refusals as of April 8, 2020 for request #s 1, 2, 4, 5, 6 and 7 and as of April 13, 2020 for Request #3.

[35] I find RVCL did not meet the legislated timelines in processing the requests.

**4. Did RVCL properly deem the Applicant's requests abandoned?**

[36] Section 7.1 of LA FOIP provides:

7.1(1) If the head has invited the applicant to supply additional details pursuant to subsection 6(3) or has given the applicant notice pursuant to clause 7(2)(a) and the applicant does not respond within 30 days after receiving the invitation or notice, the application is deemed to be abandoned.

(2) The head shall provide the applicant with a notice advising that the application is deemed to be abandoned.

(3) A notice provided pursuant to subsection (2) is to state that the applicant may request a review by the commissioner within one year after the notice is given.

[37] Often, it is clear when an applicant has decided not to pursue an access request. An applicant will indicate either in writing or on the telephone an intention not to proceed. This may be for a variety of reasons. For example, the applicant has found the information is available another way or no longer needs the information. Sometimes situations will arise where an applicant simply ceases to respond during the processing of an access to information request. No indication is given that the applicant has decided not to pursue the request. They simply do not respond to queries from the local authority. When this situation occurs, section 7.1(1) of LA FOIP sets out provisions for declaring an application abandoned (*Guide to LA FOIP*, Ch. 3., p. 43).

[38] In the seven reviews before me, the Applicant did not respond to the requests for clarification sent on behalf of RVCL. However, I have found that RVCL did not require clarification in order to identify the records and respond to the Applicant's seven requests.

[39] The Applicant has provided my office with reasons why they did not respond to the clarification letters. However, given the silliness of RVCL sending the clarifications in the first place, I find those points to be moot.

[40] Therefore, given that the clarification letters were unnecessary, I find RVCL did not properly deem the seven access to information requests abandoned. I recommend that within 30 days of this Report being issued, RVCL process the seven requests charging no additional processing fees to the Applicant.

**5. Did RVCL improperly deny the Applicant's request for a waiver of the application fee?**

[41] Section 5(1) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) provides:

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

[42] In its submission, RVCL asserted:

In all of [the Applicant's] [seven] applications, the Applicant requested that the \$20.00 application fee be waived, and provided the following:

I am a member of the RVCL municipal council and elected to represent the ratepayers.

I should not have to pay \$20.00 for information that is publically [sic] available and which is integral to my role in serving the ratepayers.

I am entitled to this information as an elected official and council member who has an Oath of office to service along with statutory imposed duties and fiduciary obligations to the ratepayers who elected me to see to the financial integrity of the Resort Village of Candle Lake i.e. look after their interest financial and otherwise

[43] Section 9(5) of LA FOIP prescribes the ability in certain circumstances where fees can be waived:

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

[44] Section 8(1)(a) of the LA FOIP Regulations prescribes the circumstances in which a local authority may waive the \$20.00 application fee. Section 8(1)(a) of LA FOIP prescribes:

8(1) For the purposes of subsection 9(5) of the Act, the following 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 involved the personal information of the applicant;

[45] Therefore, a local authority has the authority to waive the \$20.00 application fee when the request is for the applicant's personal information.

[46] In each of the seven requests, the Applicant has made a request for general information, and not their own personal information. As such, under LA FOIP, RVCL is not required to waive the \$20.00 application fee.

[47] Therefore, I find RVCL properly collected the \$20.00 application fees from the Applicant.

[48] Although I have made this finding, I understand RVCL still has not processed the Applicant's requests and I have recommended that within 30 days of issuance of this Report, RVCL process the Applicant's seven requests charging no additional processing fees to the Applicant. Should RVCL not follow this recommendation, it has no authority to keep the application fee. Therefore, I recommend if RVCL does not follow my recommendation to process the seven access to information requests within 30 days of issuance of this Report, it refund the Applicant the \$20.00 application fees.

[49] At the time these requests were made, the Applicant has noted they were also a Councillor. In my office's [Review Report 278-2019](#) (also a Review Report of RVCL), I stated:

[23] Additionally, in Review Report 075-2017 and 076-2017, my office recommended the local authority develop a policy that sets out what records a councillor is entitled to:

[26] The Applicant is a councillor. This means he is entitled to sit at each and every council meeting. As a councillor, he is entitled to participate in the discussion and to vote on decision items. In order to be a good councillor, the councillor needs access to records in the possession or control of the RM. I would have expected a councillor could ask for almost any record in the possession or control of the RM that relate to RM business except possibly those containing personal information of others. In our democratic process, those elected to public office need information...

...

[31] ...I recommend the RM develop a policy setting out what a councillor is entitled to request and receive in terms of records in the possession of the RM

[24] To ensure that RVCL is processing requests for records in a way that complements existing procedures for accessing information or records and does not limit access to records that are normally available to the public, as provided at section 4 of LA FOIP, I recommend RVCL develop and implement a policy/procedure for the processing of requests for records. The policy/procedure should include:

- what councillors are entitled to request and receive in terms of records in the possession of RVCL;
- what records are available to the public pursuant to section 117 of The Municipalities Act; and
- the steps to take when processing an access to information request under LA FOIP (including when clarification pursuant to section 6 of LA FOIP is necessary and that requests can be submitted in any written form, provided they have all the necessary elements).

[50] I made the above-noted recommendation at paragraph [28] in my office's [Review Report 278-2019](#). In response to that recommendation, RVCL advised my office by email dated August 26, 2020:

...That Council accept the Office of the [Information and] Privacy Commissioner Report 278-2019 recommendations on paragraph 28 ... and that Council works towards developing the recommended policy.

[51] I would reiterate however, that there should be policies and procedures in place for Council members as elected officials to get access to records without going through the formal



access to information process. Therefore, RVCL should ensure that the aforementioned policy and procedure is being followed for Council members.

[52] I understand since the commencement of these reviews, RVCL has elected a new mayor and council. My office has developed the resource [\*What Councillors should know about LA FOIP\*](#) that would be beneficial for the mayor and council to review. In addition, RVCL may wish to seek out access and privacy training for council and RVCL employees.

[53] The Access and Privacy Branch, Ministry of Justice and Attorney General (APB) can, if requested, provide support to local authorities in meeting their obligations under LA FOIP. The APB also developed a free, online Access and Privacy Course that may be of assistance to RVCL in meeting its obligations under LA FOIP. To learn more about this online course, RVCL can reach out to APB.

#### **IV FINDINGS**

[54] I find the Applicant's seven access to information requests were compliant with section 6(1)(b) of LA FOIP.

[55] I find RVCL did not meet the legislated timelines in processing the requests.

[56] I find RVCL did not properly deem the seven access to information requests abandoned.

[57] I find RVCL properly collected the \$20.00 application fees from the Applicant.

#### **V RECOMMENDATIONS**

[58] I recommend that within 30 days of this Report being issued, RVCL process the seven requests charging no additional processing fees to the Applicant.

[59] I recommend if RVCL does not follow my recommendation to process the seven access to information requests within 30 days of issuance of this Report, it refund the Applicant the \$20.00 application fees.

Dated at Regina, in the Province of Saskatchewan, this 30th day of March, 2022.

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