



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 125-2023

Town of Radisson

November 15, 2023

Summary:

The Applicant made an access to information request to the Town of Radisson (Town). The Town denied access pursuant to subsection 14(1)(d) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP); later, it claimed that records do not exist. The Applicant was not satisfied with the response and requested a review by the Commissioner. The Commissioner found that the Town did not conduct a reasonable search. The Commissioner recommended that the Town conduct a search and provide its search results to the Applicant and his office within 30 days of issuance of this Report.

I BACKGROUND

- [1] On May 2, 2023, the Town of Radisson (Town) received the Applicant's access to information request (access request) that stated:

Please provide any notes, texts, emails and/ or any related material in regards to the in camera session of [date redacted].

- [2] On May 5, 2023, the Town responded to the Applicant denying access pursuant to subsection 14(1)(d) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [3] On May 5, 2023, the Applicant requested a review from my office of the exemption cited by the Town.

- [4] On May 29, 2023, my office provided notice to the Applicant and the Town of my office's intention to undertake a review. On the same day, the Town informed my office that no record existed.
- [5] On May 30, 2023, my office provided additional notice to the Town, inquiring why it cited subsection 14(1)(d) of LA FOIP to deny access if no record existed and asking for an additional submission on the question.
- [6] On May 31, 2023, the Town provided a revised response to the Applicant pursuant to section 7 of LA FOIP, stating that no records exist.
- [7] On May 30, 2023 and on June 6, 2023, the Town provided its submission to my office.
- [8] On July 10, 2023, the Applicant provided their submission to my office.

II RECORDS AT ISSUE

- [9] The Town denied access pursuant to subsection 14(1)(d) of LA FOIP. During the review, the Town explained that no records exist; however, if any record did exist, then it would have relied on subsection 14(1)(d) of LA FOIP to deny access. As such, this is a review of the Town's claim that records do not exist, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [10] The Town qualifies as a "local authority" pursuant to subsection 2(1)(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

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

- [11] 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.

[12] 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 June 29, 2021 (*Guide to LA FOIP*, Ch. 3) p. 3).

[13] 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 efforts 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. 7).

[14] The focus of a search review, including when a local authority states no records exist, 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.

(*Guide to LA FOIP*, Ch. 3, pp. 9-10).

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

[16] The Applicant's request involves an incident that occurred at a council meeting on a specified date, where the police were called to remedy a situation. The Applicant does not believe the argument that no responsive records exist, due to the nature of the incident. The Applicant explained that due to this incident, the Town meeting was delayed, the police were called, and arguments unfolded. The Applicant believes such occurrence is rare and therefore, the Town should have some documentation or correspondence pertaining to the incident.

[17] On May 29, 2023, after receiving a notice from my office, the Town responded as follows:

I would gladly provide the record but none was made. [Name of the Applicant] has asked us for the record; we have searched and found none. All the discussion last year was verbal and no notes are made in-camera. There is nothing to provide for your review.

[18] On May 30, 2023, my office asked the Town to elaborate on its search efforts for this access request. The Town explained the following:

...This is to summarize my response to your questions in our phone conversation:

1. The only record related to the meetings both in-camera and general are the minutes that are only the website and were provided to [name of the Applicant]. We have conducted a thorough search of records that took several hours of both soft and hard copy files and found no records of the in-camera meeting nor the general meeting other than the minutes. I have contacted every member of Council both in email and via phone to ask if they have a record ie: notes, recording, text, etc of the meeting held [date of meeting] and they all responded "no" they do not have a record from the meeting.

2. I reconfirmed today following our phone conversation that no member of Council has any record from the meeting held [date of the meeting].

3. It is common that in-camera notes are shredded after each meeting so it is not strange that there would be no notes of the meeting if any were even taken that day. All decisions from in-camera are made in the general meeting so anything discussed that required a decision and motion of Council would be in the general meeting minutes which were provided to [name of the Applicant]...

[19] On June 6, 2023, in correspondence with my office, the Town stated:

In order for a person to even be discussed at a meeting of Council (whether in-camera or general) the person must make a written request to be on the agenda. ONLY ITEMS ON THE AGENDA may be discussed; it is law and part of the procedure bylaw. The agenda must be approved by Council. [name of the Applicant] was not on the agenda and therefore could not be discussed at the [date] meeting - that is why there is no record; [they] was not discussed nor was [they] a delegate.

[20] On June 6, 2023, in further representation to my office, the Town provided my office with a copy of its response to the Applicant regarding a previous access request detailing its search efforts. In this letter, among other things, the Town explained that the Assistant Administrator and the Administrator had conducted these searches, on March 28, 2023 and March 29, 2023, respectively.

[21] However, I note that the date of the Applicant's current access request is May 2, 2023. Therefore, though the Town may have conducted a thorough search in response of a previous access request in order to comply with a recommendation made at the time, its efforts do not address the scope of the new access request filed by the Applicant.

[22] I also note that in their new access request, the Applicant is asking for "any notes, texts, emails and/ or any related material in regards to the in camera session of [date redacted]." The scope of this access request could be interpreted broadly as responsive records are not necessarily restricted to any communication specifically on the date of the *in-camera* session, but also any subsequent communication following the *in-camera* session that related to the incident in question.

[23] Therefore, as the Town does not appear to have searched for all responsive records that might exist in relation to the records the Applicant seeks, I find that it did not conduct a reasonable search for records. As such, I recommend that within 30 days of issuance of this Report, the Town conduct a reasonable search for records and provide the results of that search to the Applicant and to my office.

IV FINDINGS

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

[25] I find that the Town did not conduct a reasonable search for records.

V RECOMMENDATION

[26] I recommend that within 30 days of issuance of this Report, the Town conduct a search for the records and provide the results of that search to the Applicant and to my office.

Dated at Regina, in the Province of Saskatchewan, this 15th day of November, 2023.

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