



REVIEW REPORT 163-2020

Resort Village of Candle Lake

April 26, 2022

Summary: The Applicant made an access to information request to the Resort Village of Candle Lake (RVCL). After receiving a response from RVCL, the Applicant requested a review by the Commissioner. The Applicant requested the Commissioner review whether RVCL responded to the request within the legislated timelines, conducted a reasonable search to locate records and provided access to the record in the appropriate manner. In addition, whether RVCL improperly denied the Applicant's request for a waiver of the application fee, and whether it met its duty to assist. The Commissioner found RVCL did not meet the legislated timelines in responding to the access to information request. The Commissioner also found that RVCL conducted a reasonable search for records responsive to the request. Furthermore, the Commissioner found the manner of access in which RVCL provided the record to the Applicant to be acceptable. In addition, the Commissioner found RVCL properly collected the \$20.00 application fee from the Applicant. Finally, the Commissioner found RVCL met its duty to assist when it processed and responded to the Applicant's access to information request. The Commissioner recommended RVCL take no further action.

I BACKGROUND

[1] The Applicant made the following access to information requests to the Resort Village of Candle Lake (RVCL) on March 19, 2020:

... all or any RVCL Council resolution authorizing the Head of the ATI-LA FOIP [Access to Information]-[*The Local Authority Freedom of Information and Protection of Privacy Act*] for the RVCL to "hire" or engage Cenera, together with all copies of correspondence exchanged by the RVCL and or the Head and Cenera in relation to the hire/engagement together with a copy of any retainer or engagement agreement or letter.

[2] By letter dated April 2, 2020, a consulting firm – Cenera – acting on behalf of RVCL advised the Applicant the following (in part):

...

Certain records you have requested may contain third party information subject to subsection 18(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (the Act). Therefore, we have given notice to the affected third party as required under section 33 of the Act. The third party has until 20 days after receiving our notice, which is approximately April 22, 2020, to provide our office with representations as to whether the records contain exempt information as referred to in subsection 18(1) of the Act, with the result that access should be denied. Once the third party has had an opportunity to respond to our notice, [RVCL] will make a decision regarding your access request for these records and notify you of the decision....

[3] On April 19, 2020, the Applicant requested a review by my office and cited their reason for requesting the review as:

- I have been refused access to all or part of the record.
- I have not received a reply to my application, which I submitted 30 days ago.
- I disagree with the decision not to grant my fee waiver.

[4] By letter dated April 21, 2020, Cenera responded to the Applicant on behalf of RVCL, denying access to a portion of the records pursuant to section 18(1)(c)(ii) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[5] By email on June 30, 2020, the Applicant advised my office that they wished to proceed with the review. Through my office's early resolution process, the scope of the review was 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).
2. [RVCL] did not properly apply subsection 18(1)(c)(ii) of LA FOIP to a portion of the requested information.
3. [RVCL] has not made a reasonable effort to identify and locate records responsive to the access to information request.
4. [RVCL] did not provide access to the requested information in the appropriate manner.
5. [RVCL] improperly denied the applicant's request for a waiver of fees.

6. [RVCL] has not meet its duty to assist, and has not responded to the access to information request openly, accurately, and completely.

[6] However, RVCL advised my office that the third party reconsidered its position regarding the single instance where section 18(1)(c)(ii) of LA FOIP had been applied to the record. On July 23, 2020, the Applicant was emailed a revised section 7 of LA FOIP response and the revised record. Therefore, item #2 was removed from the scope of the review.

[7] On July 23, 2020, my office notified RVCL and the Applicant that my office would be undertaking a review of the remaining matters and invited both parties to provide my office with a submission.

II RECORDS AT ISSUE

[8] As this review considers procedural matters, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[9] RVCL is a “local authority” pursuant to section 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did RVCL respond to the request within the legislated timelines?

[10] 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 application 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.

[11] There are some other time factors that come into play in regard to the 30-day response time. In this case, the request was received on March 19, 2020, and on April 2, 2020, Cenera notified the Applicant that there was third party information pursuant to section 18(1) of LA FOIP. In part, this letter stated:

...
Certain records you have requested may contain third party information subject to subsection 18(1) of [LA FOIP]. Therefore, we have given notice to the affected third party as required under section 33 of the Act. The third party has until 20 days after receiving our notice, which is approximately April 22, 2020, to provide our office with representations as to whether the records contain exempt information as referred to in subsection 18(1) of the Act

[12] Section 33 of LA FOIP outlines the third party notification process, and provides:

33(1) Where a head intends to give access to a record that the head has reason to believe may contain:

- (a) information described in subsection 18(1) that affects the interest of a third party; or
- (b) personal information that may be disclosed pursuant to clause 28(2)(n) and that relates to a third party;

and, in the opinion of the head, the third party can reasonably be located, the head shall give written notice to the third party in accordance with subsection (2).

(2) The notice mentioned in subsection (1):

(a) is to include:

(i) a statement that:

(A) an application for access to a record described in subsection (1) has been made; and

(B) the head intends to give access to the record or to part of it;

(ii) a description of the record that the head has reason to believe may contain:

(A) information described in subsection 18(1) that affects the interest of the third party; or

(B) personal information that may be disclosed pursuant to clause 28(2)(n) and that relates to the third party; and

(iii) a statement that the third party may, within 20 days after the notice is given, make representations to the head as to why access to the record or part of the record should not be given; and

(b) subject to subsection (3), is to be given within 30 days after the application is made.

(3) Section 12 applies, with any necessary modification, to the extension of the period set out in clause (2)(b).

(4) Where, in the opinion of the head, it is not reasonable to provide a notice to a third party pursuant to subsection (1), the head may dispense with the giving of notice.

[13] Additionally, section 12 of LA FOIP outlines the circumstances in which a local authority can extend the 30 day response time up to an additional 30 days. Specifically, sections 12(1)(c) and (2) of LA FOIP provide:

12(1) The head of a local authority may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:

...

(c) where a third party notice is required to be given pursuant to subsection 33(1).

(2) A head who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within 30 days after the application is made.

[14] The Applicant's request was received by RVCL on March 19, 2020, making the due date for RVCL's response April 20, 2020 (as day 30 fell on a Saturday). In the April 2, 2020 letter to the Applicant, RVCL advised it entered into the third party notification process and that the 20 days would expire on April 22, 2020 – two days beyond the response time.

[15] The response letter to the Applicant was dated April 21, 2020. Although it was only one day late, RVCL should have also notified the Applicant of the extension of time pursuant to section 12(1)(c) of LA FOIP in the April 2, 2020 letter.

[16] In its submission, Cenera on behalf of RVCL advised, in part, "...as this time was around the "beginning" of the mass shut downs of government and public offices, the RVCL believes that being one day over the 30 day timeline during a pandemic is not an egregious delay."

[17] I do sympathize with RVCL that this request was received and due at the beginning of the COVID-19 pandemic. I also agree that the one-day delay was not egregious. Furthermore, given the circumstances at that time the Applicant should have been more flexible with the response being one day late. However, had RVCL included notice of the 30 day extension pursuant to section 12(1)(c) of LA FOIP in the April 2, 2020 letter it sent to the Applicant this would have been a non-issue.

[18] Therefore, I find RVCL did not meet the legislated timelines in responding to the access to information request.

3. Did RVCL conduct a reasonable search to locate records?

[19] Section 5 of LA FOIP clearly outlines that access to records must be granted if they are in the possession or under the control of a local authority unless an exemption applies. Section 5 of LA FOIP 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.

[20] The *Guide to LA FOIP*, Chapter 3: “Access to Records”, updated June 29, 2021 (*Guide to LA FOIP*, Ch. 3) discusses how searches for records should be conducted by a local authority starting at page 7.

[21] A “reasonable search” is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the 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 (*Guide to LA FOIP*, Ch. 3, p. 7).

[22] When a local authority receives a notification letter or email from my office requesting details of its search efforts, some or all of the following can be included in the submission to my office (*Guide to LA FOIP*, Ch. 3, p. 9):

- For personal information requests – explain how the individual is involved with the government institution (i.e. client, employee, former employee etc.) and why certain departments/divisions/branches were included in the search.
- For general requests – tie the subject matter of the request to the departments/divisions/branches 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 included in the search.
- Describe how records are classified within the records management system. For example, are the records classified by alphabet, year, function and/or 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 government institution'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):

[23] In its submission, Cenera on behalf of RVCL, advised it made the following efforts to search for records:

On March 19, 2020, the [Cenera] Consultant requested that the RVCL Administrator conduct a search for the following:

- Any and all information provided to or provided by the RVCL Council to hire Cenera
- Any and all correspondence between the RVCL and Cenera
- The contract/agreement between the RVCL and Cenera

During this timeframe, the Consultant also reviewed their own email to collect records responsive to the request, obtaining one email and one document that was responsive to the Applicant's request. On March 26, 2020, the RVCL administrator, following the Saskatchewan IPC's *Responsive Records Search Checklist*, conducted the following search:

Electronic Records

- Searched the “O” and “Z” drive in the RVCL’s electronic system. This search took 2 hours to complete, and the [RVCL] Administrator specifically searched for the keywords “Cenera”, “[Consultant 1 last name]”, “[Consultant 2 last name]” and “[Consultant 1 first name]”. Two responsive records were located. This was done again on the RVCL laptop, with the same two records being responsive.
- The following two emails were searched: candleadministrator@sasktel.net and rvcandlelakeoffice@sasktel.net. The same previously noted keywords were used, with 7 responsive records being found.

Physical Records

- Physical file folder titled “LAFOIP Files” was searched, with 9 records being retrieved over a 1 hour timespan. These records were duplicates (i.e. printouts) of the electronic records)

As previously noted, the Consultant received the responsive materials from the RVCL Administrator on March 26, 2020, to which the Consultant followed up with the Administrator via email on March 27, 2020, asking the following:

Do you have any documentation such as the [Request for Proposal], notes from speaking with [Cenera] before the March 12, 2020 emails? The Applicant is looking for “all or any” information, so we will have to be quite broad on the records collected. Anything in regard to Cenera and this contract.

The Administrator responded to the Consultant on March 30, 2020, advising that there were no additional responsive records. As the Administrator of the RVCL, the Administrator was most qualified to search for records responsive to the Applicant’s request, as [they] has been involved with the consideration and hiring of [Cenera] since March 12, 2020, when [Cenera] was approached.

- [24] As noted in RVCL’s submission, it used my office’s resource, [Responsive Records Search Checklist](#) as assistance in conducting its search for records. Based upon a review of the search efforts outlined in the submission and compared to the *Response Records Search Checklist* and the search criteria my office looks to in the bulleted list above, I am satisfied that RVCL’s search efforts were reasonable. In addition, based upon the records that the Applicant was requesting and specific nature of the request, there likely would be few areas within RVCL that would house the records that were requested by the Applicant.
- [25] Therefore, I find RVCL conducted a reasonable search for records responsive to the request.

4. Did RVCL provide access to the record in the appropriate manner?

[26] Section 10 of LA FOIP outlines the manner in which a local authority shall provide access to a record. Section 10 of LA FOIP provides:

10(1) If an applicant is entitled to access pursuant to subsection 9(1), a head shall provide the applicant with access to the record in accordance with this section.

(2) Subject to subsection (3), if a record is in electronic form, a head shall give access to the record in electronic form if:

(a) it can be produced using the normal computer hardware and software and technical expertise of the local authority;

(b) producing it would not interfere unreasonably with the operations of the local authority; and

(c) it is reasonably practicable to do so.

(3) If a record is a microfilm, film, sound or video recording or machine-readable record, a head may give access to the record:

(a) by permitting the applicant to examine a transcript of the record;

(b) by providing the applicant with a copy of the transcript of the record; or

(c) in the case of a record produced for visual or aural reception, by permitting the applicant to view or hear the record or by providing the applicant with a copy of it.

(4) A head may give access to a record:

(a) by providing the applicant with a copy of the record; or

(b) if it is not reasonable to reproduce the record, by giving the applicant an opportunity to examine the record.

[27] The Applicant received a copy of the record via email, and advised my office their preferred manner of access was a hardcopy (paper) record. By email of May 11, 2020, the Applicant advised my office, in part:

... I never agreed to receiving my [access to information] request responses by email and certainly not to the RVCL email. I filed a hard copy Requests for Information and

ATIs. I paid in hard cold cash- \$20.00. I would have expected, and believe I am entitled to hard copies

[28] Section 2(j) of LA FOIP provides the definition of a “record”:

2 In this Act:

...

(j) “**record**” means a record of information in any form and includes information that is written, photographed, recorded or stored in any manner, but does not include computer programs or other mechanisms that produce records;

[29] My office’s July 23, 2020 notification email to RVCL asked the following in regard to manner of access:

... The applicant alleges that a physical copy of the response to this access to information was never received in the mail. Please advise how the Resort Village of Candle Lake responded (electronically or via hard copy), and why the response was provided in that manner? Did the applicant provide a written request for you to respond in that manner, if so, please provide the analyst a copy of that request.

[30] In its submission, RVCL advised my office of the reasons it provided the Applicant the record via email. Part of those reasons included:

... The Applicant’s Access to Information request did not specify the manner of access that [they] would have preferred. On April 21, 2020, the RVCL provided a section 7 response and access to the responsive materials via email – there are various reasons for this.

1. Covid-19

Since early 2020, the world has been grappling with the coronavirus (COVID-19), which is a highly contagious virus that causes moderate to severe flu-like symptoms.

On March 16, 2020, the RVCL—like many public and private organizations across Saskatchewan—closed its office to the public in order to protect its employees and to prevent the transmission of the virus in the community. A public notice was issued advising that the administrative office was closed to the public (including to councillors and labourers) and that only administrative staff would be in the office. All municipal services would still be available via telephone, email and facsimile.

2. Refusal of Applicant to accept correspondence from the Consultant

Since March of 2020, the RVCL has received 12 Access to Information requests from the Applicant, and all have been referred to the Firm for processing. As discussed above, the Consultant was delegated authority from the Mayor to respond to the requests made by the Applicant, and the Applicant was advised of such on March 19, 2020. The RVCL submits that the Applicant received and was aware of this notice, as [they] made a subsequent Access to Information request on the same date for information concerning the Firm and its communications with the RVCL, which is the subject of this review

The Consultant has attempted to communicate with the Applicant on more than 10 occasions regarding his various requests; through telephone, email and registered mail. The Applicant continues to refuse to communicate with the Consultant, therefore the decision was made to correspond with [the Applicant] via email with attached letters signed by the Mayor.

The Applicant stated in [their] request “please provide me copies of the *record of...”, and did not specify that he wanted paper copies of the record. As noted above, the Applicant has previously refused to receive both email and registered mail correspondence from the Consultant, therefore, it was believed by the RVCL and the Consultant that, along with the other above-noted reasons, it was reasonable to provide copies of the record via email, which could be tracked and have a delivery receipt.

[31] From a review of the Applicant’s original request, I can confirm the Applicant did not specifically request access to the record in a particular manner. Furthermore, because the record is in electronic form, the Applicant has the ability to use the record in its electronic form or to print the record. Finally, as our province moves to more digital over paper records, I expect that public bodies will begin to move towards providing access to records electronically and my office encourages this. There are many benefits to providing access electronically including less paper waste and potential savings to Applicants when a fee estimate is necessary to process the request.

[32] Therefore, I find the manner of access in which RVCL provided the record to the Applicant to be acceptable.

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

[33] In the Applicant's access to information request, they requested that the \$20.00 application fee be waived.

[34] 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.

[35] In my office's [Review Report 084-2020, 085-2020, 086-2020, 088-2020, 090-2020, 091-2020, 092-2020](#), I stated the following as it relates to the waiver of the application fee:

[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 can 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.

[36] In this request, the Applicant made a request for general information. As such, under LA FOIP, the local authority does not have to waive the \$20.00 application fee.

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

6. Did RVCL meet its duty to assist and respond to the access to information request openly, accurately and completely?

[38] Section 5.1(1) of LA FOIP outlines a local authority's duty to assist when responding to an access to information request:

5.1(1) Subject to this Act and the regulations, a local authority shall respond to a written request for access openly, accurately and completely.

[39] Section 5.1(1) of LA FOIP requires a local authority to respond to an applicant's written access to information request openly, accurately and completely (*Guide to LA FOIP*, Ch. 3, p. 15).

[40] How a local authority fulfills its duty to assist will vary according to the circumstances of each request, and requires the exercise of judgment. The most important aspects of the duty to assist are likely to arise in the course of:

- Providing the information necessary for an applicant to exercise his or her rights under LA FOIP.
- Clarifying the request, if necessary.
- Performing an adequate search for records.
- Responding to the applicant.

(*Guide to LA FOIP*, Ch. 3, p. 17)

[41] In its submission, RVCL asserts:

The Applicant provided a concise request for information, and the RVCL released all responsive information to the Applicant. As previously noted, the RVCL recognizes that it was one day overdue in its response under the legislated timelines, to which it recognizes the duty to assist in regards to responding to a request in a timely manner was not met. However, the RVCL has also demonstrated that it responded openly, accurately and completely by conducting a thorough search for records, and providing full access to the requested information despite the Applicant continuing to openly avoid and ignore contact from the Consultant. Additionally, the Applicant did not specify that [they] wished to have the records released to [them] in paper form, and with the ongoing global pandemic and division between the RVCL and the Applicant, the RVCL responded via email, which was provided as a means of contact on the Applicant's Access to Information request form.

[42] In addition to the above, RVCL further demonstrated it met its duty to assist as it released additional information to the Applicant it had first withheld. Therefore, I find RVCL met

its duty to assist when processing and responding to the Applicant's access to information request.

IV FINDINGS

[43] I find RVCL did not meet the legislated timelines in responding to the access to information request.

[44] I find RVCL conducted a reasonable search for records responsive to the request.

[45] I find the manner of access in which RVCL provided the record to the Applicant to be acceptable.

[46] I find RVCL properly collected the \$20.00 application fee from the Applicant.

[47] I find RVCL met its duty to assist when processing and responding to the Applicant's access to information request.

V RECOMMENDATION

[48] I recommend RVCL take no further action.

Dated at Regina, in the Province of Saskatchewan, this 26th day of April, 2022.

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