



REVIEW REPORT 167-2022

Town of Radisson

March 27, 2023

Summary: The Applicant made an access to information request to the Town of Radisson (Town). The Town denied access and 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 July 20, 2022, the Applicant hand-delivered their access to information request (access request) to the Town of Radisson (Town). This access request from the Applicant stated:

I'm requesting any and all correspondence between the any and or all Administration, Council, Police and any other group or individual{s} in regards to the horrific events of the Radisson Town Council meeting of [date redacted].

This request is from the date of [date redacted] in and around this horrific event only.

[2] On August 25, 2022, the Town responded to the Applicant as follows:

Thank you for your access to information request received in our office on July 20, 2022, requesting access to all correspondence between any and all Administration, Council, Police and any other group or individual(s) in regard to the events of [date redacted].

There was no council meeting that day.

There is no correspondence...

Assuming that was a typo. There is still no records in this office pertaining to any correspondence between these individuals or companies.

[3] On August 25, 2022, the Applicant requested a review from my office because they believed that some records should exist due to the nature of the incident.

[4] On August 31, 2022, my office provided notification to the Applicant and the Town of my office's intention to undertake a review.

[5] On November 3, 2022, the Town provided its submission to my office. The Applicant did not provide a submission to my office.

II RECORDS AT ISSUE

[6] As 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?

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

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

[8] 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.

- [9] 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).
- [10] Subsection 5.1(1) of LA FOIP requires a local authority to respond to an applicant's access to information request openly, accurately and completely. This means that local authorities should make reasonable effort to not only identify and seek out records responsive to an applicant's access to information request, but to explain the steps in the process. The threshold that must be met is one of "reasonableness". In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable (*Guide to LA FOIP, Ch. 3*) p. 7).
- [11] 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).

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

[13] 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. I note that the Applicant

had the wrong date in their access request, which the Town corrected with the Applicant and so that is not an issue in this review. The Applicant does not believe that there would be no responsive records 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.

[14] The Town indicated that the records relating to the incident on the date in question do not exist, however, it did not cite subsection 7(2)(e) of LA FOIP in its section 7 decision. A statement by a local authority that a record does not exist does not imply that the record in question does not exist at all. The term “exist” in subsection 7(2)(e) of LA FOIP is a function of being possessed or controlled by the local authority to which the access request is being made. There are two circumstances where a response that records do not exist can occur: 1) the search did not produce records; and/or 2) the local authority does not have possession or control of the record (*Guide to LA FOIP*, Ch. 3, pp. 35-36). The Town stated as follows:

... There is no records. We have a file on [name of the Applicant] and there is nothing in it regarding the information [the Applicant] requested. The incident was all done via a phone conversation and we have no way of keeping records for phone conversations. We also keep any emails from [the Applicant] and there is only emails with accusations from [the Applicant]. As [the Applicant] is aware we require an administrative fee of \$25.00 (that [they] can etransfer) for any request of information. Our Minutes and Bylaws are on our website for anyone to access.

...
Everything that transpired was verbal. There is no correspondence regarding this issue. [The Applicant] was there and should be aware of the phone conversations... “The only correspondence we received have been from [the Applicant] so [the Applicant] should already have it”.

[15] To keep records of phone conversations is as simple as taking notes of what is discussed and is a very common practice. It is not reasonable for a local authority to rely on an employee’s opinion that no records exist instead of conducting a search. A local authority should not rely on anyone’s memory as to whether records were created. It cannot know in advance of doing a search whether records were created or not. All an individual can say,

with any reasonable certainty, is whether he or she personally created any records. Otherwise, the individual is merely expressing an opinion as to the likelihood of whether anyone else created records. A local authority cannot absolve itself of its duty to search based on an individual's opinion about whether records were created. If a local authority could forego its duty to search based on such an opinion, the Act would be frustrated (*Guide to LA FOIP*, Ch. 3, pp. 7-8).

[16] While the Town indicated what it believes transpired, I am mindful, that information may still exist in documents, such as texts, handwritten notes, emails or instructions to/among councillors, that the administrator is unaware of. To know this, a local authority needs to conduct a search.

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

[18] My office's notification to the Town asked it to comment on why it did not cite subsections 7(2)(e) and 7(3) of LA FOIP, but the Town did not address this in its response to my office. When a local authority provides a response to an access request, it is required to state on which subclause of subsection 7(2) of LA FOIP it is relying on. Pursuant to subsection 7(3) of LA FOIP a local authority is also required to advise an applicant of their right to request a review by my office within one year of receiving the local authority's notice. When a local authority does not cite these subsections, it is said to be not in compliance with them, and so is not in compliance with section 7 of LA FOIP. These subsections provide as follows:

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

...

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

...

(3) A notice given 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.

[19] I remind the Town that in response to access to information requests, it is required to cite which subclause from subsection 7(2) of LA FOIP it is relying on. The Town is also required pursuant to subsection 7(3) of LA FOIP to include a reference to an applicant's right to request a review by my office within one year after receiving the local authority's notice. These are obligations that every local authority has when it receives an access request under LA FOIP. The Town should ensure it has policies and procedures in place to assist it in responding to access to information requests. The Town may find the following web resources helpful in doing so:

- [Best Practices for Responding to Access Requests](#)
- [IPC Guide to LA FOIP](#)
- [The Rules of Procedure](#)

IV FINDINGS

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

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

V RECOMMENDATION

[22] 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 27th day of March, 2023.

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