



REVIEW REPORT 174-2021

Rural Municipality of Ituna Bon Accord No. 246

July 19, 2022

Summary: The Applicant submitted an access to information request to the Rural Municipality of Ituna Bon Accord No. 246 (RM). The RM responded by providing the Applicant with records. However, the Applicant was of the position that they had not received records responsive to their access request. The Applicant appealed to the Commissioner. The Commissioner found that the RM made reasonable efforts to search for records responsive to the Applicant's access request and therefore, with respect to search, take no further action. He also found that the RM met its duty to assist. However, the Commissioner recommended that the RM set up procedures to ensure that it responds to access to information requests under LA FOIP within 30 days of receiving the access request and to ensure its responses are compliant with sections 7(2) and (3) of LA FOIP.

I BACKGROUND

[1] I was raised in the Town of Ituna which is contained within the Rural Municipality of Ituna Bon Accord No. 246 (RM). Although no conflict exists today, I have taken no part in this review. I have delegated the Deputy Commissioner to make all decisions related to this review.

[2] On May 17, 2021, the RM received the following access to information request:

Regarding New West Partnership Agreement
[Name of group] requesting all tenders issued by RM of Ituna Bon Accord for all equipment required by RM for last four (4) years. Please include successful bids. Please [sic] 2021 purchases.

[3] On that same day, the RM responded by email. The RM forwarded a document entitled, “Equipment Purchased by RM of Ituna Bon Accord No. 246 (2017-2021) (Sourcewell Contracts)”. The document listed four contracts. Then, the RM printed out resources from the Saskatchewan Association of Rural Municipalities’ (SARM) website, including the Cooperative Procurement Guide. On one of the resources, the RM handwrote the following note:

Note: This is why we do not tender for equipment. SARM does it on behalf of its members in order to get the best prices for RM’s. The contracts when purchasing equipment in this way are called Sourcewell contracts. We are part of the buying group.

[4] On May 20, 2021, the Applicant wrote an email to the RM clarifying that it needs copies of contracts and all options provided to the RM. The Applicant said:

Having read your email regarding tendering of RM Equipment [sic] the [Name of group] has questions regarding the process as explained. You state the RM is a part of a buying group and state the four (4) purchases are under Sourcewell Contracts. Help us understand the process, please provide copies of these contracts to support this claim. We believe a buying group would provide more than one option to a [sic] purchase, we are requesting a copy of all options provided by the buying group and result as agreed to by RM Council.

[5] On June 29, 2021, the Applicant sent another email to the RM:

The [Name of group] would appreciate an update regarding this request, please provide, thanks

[6] On the same day, the RM responded:

I’m really sorry for making you wait on this. I’ve been busy with municipal hail and a lot of other things – and I haven’t gotten to your request yet. I will get to this as soon as I can – and thanks for your patience.

[7] On July 11, 2021, the Applicant requested a review by my office.

[8] On July 16, 2021, my office contacted the RM requesting that it provide a response pursuant to section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) respond to the Applicant’s access to information request.

[9] On July 23, 2021, the RM responded to the Applicant's access request by email. Attached to the email was a 62-page portable document format (PDF) document

[10] On July 26, 2021, the Applicant forwarded the RM's response to my office. The first page of the RM's response included the following explanation of how the RM purchases equipment:

The SARM/Sourcewell buying group provides the best possible pricing through their accepted vendors. For example, if the RM knew it wanted a John Deere tractor, SARM/Sourcewell would ensure the RM would get the best possible price. That saves time and money for the RM because it does not have to go to all the John Deere dealers in the area to get quotes for the same piece of equipment.

SARM/Sourcewell also does provide more than one option to purchase. The RM has the freedom to choose what make of equipment it would like to purchase and, at the same time, know that the RM is receiving the best pricing for that make of equipment. For example, the RM could contact both Caterpillar and John Deere for a grader. The tendering for Caterpillar graders and John Deere graders has already been done by SARM/Sourcewell in order to get the best price for the RM's and eliminate the need for RM tendering. That is the benefit of participating in the buying group. Please see the information (SARM Trade Compliant and Cooperative Procurement Guide) emailed to you on May 17/21.

[11] The remainder of the first page of the 62-page response from the RM included a bulleted list of the equipment purchased by the RM from 2017 to 2021. The second page is a portion of the SARM/Sourcewell Vendor List for 2021. The remaining 60 pages were contracts and quotes the RM received from 2017 to 2021 from vendors.

[12] Since the above response did not appear to be compliant with section 7 of LA FOIP, my office contacted the RM on July 27, 2021, to ask that it send a section 7 response to the Applicant.

[13] In a letter dated July 28, 2021, the RM provided a section 7 response to the Applicant. In the letter, the RM said it had disclosed all the information it has within the RM office. It referred the Applicant to the SARM website or to contact SARM for additional information. Finally, it said the "notification that no other information exists in this RM

Office regarding your access to information request is made to you according to section 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act.*”

[14] On August 7, 2021, the Applicant indicated to my office that they were dissatisfied with the RM’s response.

[15] On August 13, 2021, my office notified both the Applicant and the RM that it would be undertaking a review.

II RECORDS AT ISSUE

[16] At issue is the RM’s efforts to search for records. Therefore, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[17] The RM qualifies as a “local authority” as defined by section 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

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

[18] 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.

[19] Section 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 (*Guide to LA FOIP*, Ch. 3, p.7).

[20] 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. 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 any fair, sensible person searching areas where records are likely to be stored (*Guide to LA FOIP*, Ch. 3, p.7).

[21] 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:

- 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(are) experienced in the subject matter.
- Explain how the records management system is organized (both paper and 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 the 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 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)

[22] The above list is meant to be a guide. Providing the above details is not a guarantee that my office will find the search conducted was reasonable. Each case will require different search strategies and details depending on the records requested.

[23] In its submission, the RM explained that its Administrator who conducted the search for records. The Administrator is the person responsible for the RM's records and is the only employee in the RM's office. Next, the RM explained that for its records regarding equipment for the past four years are paper records. They are organized alphabetically and by year. In terms of its search, it described the records it provided as follows:

- **Mower - 2017:** This file contains the following information which was emailed to [the Applicant] on July 23/21: Quote from Dionco Sales for Degelman mower & sidearm, Quote from Pattison Ag for Degelman mower & sidearm, Quote from Pattison Ag for Schulte mower & sidearm, Quote from Pattison Ag for Highline mower, Contract with Pattison Ag for purchase of Highline mower, Receipt for purchase of Highline mower.
- **Tractor - 2018:** This file contains the following information which was emailed to [the Applicant] on July 23/21: Quote from Pattison Ag for 6155M John Deere tractor, Contract with Pattison Ag for purchase of John Deere tractor, Receipt for purchase of John Deere tractor.

- **Grader - 2019:** This file contains the following information which was emailed to [the Applicant] on July 23/21: Quote from Brandt Tractor for John Deere grader, Sales agreement and invoice for purchase of Caterpillar grader.
- **Mower - 2021:** This file contains the following information which was emailed to [the Applicant] on July 23/21: Quote from Dionco Sales for Degelman mower & sidearm, Quote from Flaman Sales for Schulte mower & sidearm, Quote from Pattison Ag for Schulte mower & sidearm.

[24] Before I make a finding regarding the RM's search efforts, I need to consider the Applicant's basis for believing why the RM has not provided records responsive to their request.

[25] As noted in the background, the RM had made efforts to explain to the Applicant that it is a part of a "SARM/Sourcewell" buying group. The RM explained that "SARM/Sourcewell" completes the tendering process for equipment and eliminates the need for the RM to go through such a process. As a member of the buying group, the RM is able to contact vendors directly and be sure they are receiving the best pricing.

[26] On May 17, 2021, the RM had forwarded a "Cooperative Procurement Guide" to the Applicant (who then forwarded it to my office). This Cooperative Procurement Guide was a resource available on SARM's website. Page 5 of the Cooperative Procurement Guide explains that the member of the buying group is to contact a vendor (or supplier) directly:

Once your organization has an active account and the steps noted previously are taken, you can make a purchase through one of our programs by contacting the approved supplier of your choice and placing your order. Usually, you will need to let the supplier know that you would like to use the cooperative procurement program through your municipal association. Indicate that you are purchasing through the buying group on all correspondence and purchase orders.

[27] In the course of my office's review, the Applicant explained that 1) they do not believe that the RM engaged in the above process to purchase equipment and 2) the Applicant believes that there should be records related to a "Request for Quote" process. In an email dated August 7, 2021 to my office, the Applicant said:

All correspondence received by RM of Ituna Bon Accord does not indicate any connection to SARM, Canoe or Sourcewell. If the RM is using this service, we believe the information provided by SARM in conjunction with Sourcewell would require detailed specifications placed by RM for the equipment prior to any work done by the third party.

Having been in the business world, we believe a RFQ (Request For Quote) would have been created by the RM and forwarded to SARM.

Example: RM would place a request to SARM asking for a tractor with specific requirements; horsepower, with or without Mechanical Front Wheel Assist, front end loader equipped etc..

[28] Regarding the Applicant's first point, my office reviewed the 62-page PDF document provided to the Applicant and noted that some of the records do indeed refer to the buying group's Sourcewell contract, including pages 52 to 57 of the PDF document.

[29] Regarding the Applicant's second point, the 62-page PDF document includes quotes from various vendors to the RM. I note that the Applicant believes that SARM should be the intermediary between the RM and vendors, where the RM creates a RFQ and then forwards it to SARM. However, based on a review of the Cooperative Procurement Guide, the RM's submission, and the records themselves, that is not the case. The RM can go directly to the vendor to request quotes and to make purchases. Such records were provided to the Applicant.

[30] I note that in their submission, the Applicant alleges that the RM is not compliant with the required tendering process and, as such, no records exist:

We are requesting a review as we believe this information was not provided as requested. **Most major purchases are all being purchased from one company Pattison in Yorkton, Sask. No Tenders to our knowledge as well none have been provided to us from the RM. Information on specifications, tender, results of tender have not been provided and the RM of Ituna Bon Accord stating they do not have any paperwork in regards to the above.**

At the same time, **no tenders whether invitational or through SaskTenders are issued when selling equipment, RM owned land or when leasing land. The RM of Ituna Bon Accord minutes indicate in more than one occasion the selling and leasing of public assets is done privately to friends and family without being published as a tender on the website or newspaper prior to the transaction.**

[Emphasis added]

[31] Based on the above, the Applicant is asserting that there are “no tenders” and alleging that the RM is not following the rules required for purchasing and/or selling equipment and land. The Applicant may not be seeking records but attempting to express disagreement with how the RM may be conducting business. Nevertheless, my office’s concern is whether or not the RM completed a reasonable search for records based on the Applicant’s written access request (received by the RM on May 17, 2021).

[32] Based on the details provided to my office, I find that the RM has made reasonable efforts to search for records responsive to the Applicant’s access request. This includes records that details the RM’s purchasing process for equipment for the past four years.

[33] I recommend that the RM take no further action regarding the search for records.

3. Did the RM respond to the Applicant’s access to information request pursuant to section 7 of LA FOIP?

[34] When a local authority receives an access to information request pursuant, it must either provide a response to the Applicant or transfer the access request pursuant to section 7(1) of LA FOIP:

7(1) Where an application is made pursuant to this Act for access to a record, the head of the local authority to which the application is made shall:

(a) consider the application and give written notice to the applicant of the head’s decision with respect to the application in accordance with subsection (2); or

...

[35] When a local authority responds to an access request pursuant to section 7(1)(a) of LA FOIP, the response must meet the requirements of section 7(2) and (3), which are:

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 43.1 and setting out the reason for which the request was disregarded.

(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.

[36] As detailed in the background, the RM provided responses to the Applicant on May 17, 2021, July 23, 2021 and July 28, 2021. Below is a summary of what was contained within each of the responses:

- May 17, 2021: The RM provided a list of the equipment purchased by the RM in the past four years and information from SARM's website, including the Cooperative Procurement Guide to explain the equipment purchasing process.
- July 23, 2021: The RM provided the Applicant with a 62-page PDF document that explained the equipment purchasing process, a partial list of SARM/Sourcewell vendors, and contracts and quotes.
- July 28, 2021: The RM explained it had provided all the information responsive to the Applicant's access request that was in the RM's office and explained that no other information exists.

Then, the RM informed that the Applicant of their right to request a review by my office of the RM's response to their access request.

[37] Based on a review of the RM's responses, I find that its response dated July 28, 2021, met the requirements of section 7(2) and (3) of LA FOIP, except that it was not provided within the 30-day timeline. However, the May 17, 2021 and July 23, 2021 responses by the RM to the Applicant demonstrates the efforts the RM undertook to give the Applicant both the records requested and an explanation of the RM's equipment purchasing process.

[38] I recommend that the RM set up procedures to ensure that it responds to access to information requests under LA FOIP within 30 days of receiving the access request and to ensure its responses are compliant with sections 7(2) and (3) of LA FOIP.

4. Did the RM meet its duty to assist the Applicant?

[39] Section 5.1(1) of LA FOIP provides:

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.

[40] 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. This means that local authorities should make a 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 and seek any necessary clarification on the nature or scope of the request within the legislated timeframe. The duty to assist also involves making reasonable effort to assist without delay (*Guide to LA FOIP*, Ch. 3, p. 15-16).

[41] As I have said in my office's Review Report 347-2019 and [Review Report 248-2020, 167-2021](#), to respond openly means to provide access to all or part of a record and to be upfront in the reasons for refusing access. To respond accurately means to understand every part of the access request, and to clarify the nature if required. To respond completely means to not leave any gaps in a response to an applicant, thereby eliminating confusion.

[42] In its submission, the RM explained the following:

It is my understanding that LAFOIP does not require a municipality to create records in response to an access to information request, but if the information requested is in the possession and control of the municipal office, it is my responsibility and duty (as the administrator) to openly, accurately, and completely provide that information to the person requesting it. That is what I did in order to accommodate [Name of Applicant]'s request for information. I also referred him to another source where he could possibly find the information he was looking for.

[43] As detailed in the background of this Report, I note that the RM made efforts to explain to the Applicant the records it does have in its possession and control. It also explained the process which it undertakes to purchase equipment. Such an explanation would have served as a useful basis upon which the Applicant could have clarified their access request. These efforts demonstrates to me that the RM responded to the Applicant's access request openly, accurately, and completely.

[44] I find that the RM has met its duty to assist.

IV FINDINGS

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

[46] I find that the RM has made reasonable efforts to search for records responsive to the Applicant's access request. This includes records that details the RM's purchasing process for equipment for the past four years.

[47] I find that the RM's response dated July 28, 2021, met the requirements of section 7(2) and (3) of LA FOIP, except that it was not provided within the 30-day timeline.

[48] I find that the RM has met its duty to assist.

V RECOMMENDATIONS

[49] I recommend that the RM take no further action regarding the search for records.

[50] I recommend that the RM set up procedures to ensure that it responds to access to information requests under LA FOIP within 30 days of receiving the access request and to ensure its responses are compliant with sections 7(2) and (3) of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 19th day of July, 2022.

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