



REVIEW REPORT 181-2020

Rural Municipality of Rosthern No. 403

May 3, 2022

Summary:

The Rural Municipality of Rosthern No. 403 (RM) received an access to information request from the Applicant under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) for an audio recording of a council meeting. The Applicant also requested a fee waiver. The RM denied the fee waiver, issued a fee estimate, which included the cost of preparing a transcript of the recording and requested a deposit before it would process the access to information request. After filing a request for review with my office, the RM released a redacted audio recording to the Applicant at no cost. In this review, the sole issue is whether the RM complied with its duty to assist the Applicant as required by section 5.1 of LA FOIP. The Commissioner found that the RM did not comply with section 5.1 of LA FOIP, recommended that the RM acquire and implement technology to redact audio recordings and take steps to make recordings of open public meetings routinely available to the public.

I BACKGROUND

[1] The Applicant submitted an access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the Rural Municipality of Rosthern No. 403 (RM) on July 22, 2020. The Applicant sought access to the “Zoom recording” of the RM’s July 2020 public meeting. The Applicant also requested a waiver of any fees associated with providing access to this recording.

[2] On August 4, 2020, the RM responded to the request by denying the fee waiver, issuing a fee estimate, requesting a deposit of 50% of the fee estimate and payment of the \$20.00 application fee. It also stated that pursuant to section 10(3) of LA FOIP, it would provide

the Applicant with a transcript of the Zoom recording and included the cost of preparing the transcript in its fee estimate. The RM did not explain the reasons for its decision to provide a transcript, other than to say:

We have concluded that provision of a transcript is an appropriate means to provide you access to the record while protecting the exempt information.

[3] The RM also stated that its preliminary review of the recording indicated that it contained exempt information, including but not limited to information exempt pursuant to sections 16(1)(b), (d), 17(1)(e), 23(1)(a), (c), (e), (f), (g), (k)(i) and (ii) of LA FOIP.

[4] The Applicant filed a request for a review with my office on August 7, 2020, stating that they disagreed with the proposed manner of providing access to the information, the fee estimate and the decision to deny them a fee waiver.

[5] My office made efforts to resolve the issues in this review and they were unsuccessful.

[6] On September 4, 2020, my office notified the Applicant and the RM of my office's intention to undertake a review of the RM's decision. The notification invited them to file a submission on the:

- Manner of providing access to the record.
- Fee estimate, and the request for a deposit and the \$20.00 application fee.
- Decision to deny a fee waiver.
- Duty to assist in section 5.1 of LA FOIP.

[7] The RM provided its submission to my office on October 2, 2020. The Applicant did not file a submission.

[8] Following discussions with my office, on April 1, 2022, the RM wrote to the Applicant releasing a redacted version of the audio recording and stating that the redacted information was exempt pursuant to sections 23(1)(a), (b), (c), (e), (f), (g), (h), (k), 16(1)(b), (d), and

17(1)(e) of LA FOIP. The audio recording was redacted using software that was available on the internet for free. The RM released the redacted recording to the Applicant at no cost. I applaud the RM for using software to redact the recording and for providing the Applicant with the record in the format in which they requested it.

[9] The Applicant subsequently advised my office that they were not seeking access to the redacted information and that the only outstanding issue was whether the RM had met its duty to assist pursuant to section 5.1(1) of LA FOIP.

[10] In light of its decision to release a redacted version of the audio recording, my office invited the RM to provide a supplementary submission addressing its compliance with section 5.1(1) of LA FOIP. The RM provided a supplementary submission on April 18, 2022.

II RECORD AT ISSUE

[11] As the issues in this review relate to the RM's duty to assist, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[12] The RM qualifies as a "local authority" as defined in section 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to review this matter.

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

[13] The duty to assist applicants is set out in section 5.1(1) of LA FOIP which 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.

[14] 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*, Chapter 3, "Access to Records", updated June 29, 2021 [*Guide to LA FOIP*, Ch. 3], pp.15-16)

[15] A reasonable effort is what a fair and rational person would expect to be done or would find acceptable and helpful in the circumstances. How a local authority fulfills its duty to assist will vary according to the circumstances of each request and requires the exercise of judgment (*Guide to LA FOIP*, Ch. 3, pp. 16-17).

[16] My office's guidance, [*Understanding the Duty to Assist*](#), at page 1, provides:

Though FOIP [*The Freedom of Information and Protection of Privacy Act*] and LA FOIP require the public body to respond openly, accurately and completely, the duty also involves making every reasonable effort to assist without delay. This should occur pre and post receipt of any access to information request.

[17] The requirement to respond openly means that a local authority must be honest, forthcoming and transparent. Where a decision is made to not provide an applicant with all or part of a record, a local authority should provide reasons for the refusal in an upfront and informative manner. To respond openly to an access request, local authorities must be transparent and provide explanations of the processes, actions and decisions taken to respond to an access request (*Guide to LA FOIP*, Ch. 3, p.16).

[18] To be accurate means the local authority must provide the applicant with sufficient and correct information about the access process and how decisions are made. This includes understanding what the applicant is actually looking for and includes clarifying the nature of the access to information request.

[19] A complete response is one that includes every item or element, without omissions or deficiencies; and is not lacking in any element or particular. Furthermore, it means the

information from a local authority must be comprehensive. A local authority should provide all the necessary details to enable an applicant to understand how a decision was reached. This will include explaining the factors that were relied upon in exercising its discretion.

[20] In its submission, the RM asserted that it met its duty to assist. Its assertion is premised on the claim that it did not have available to it resources to sever information that it considered to be exempt pursuant to LA FOIP. As a result, it was necessary to prepare a transcript of the audio recording.

[21] The RM's submission also asserted:

The RM's response to the Applicant was timely, reasonable and open. The RM was able to identify the responsive record and the associated privacy concerns. It explained its position clearly to the Applicant. Rather than simply refusing access, as it might have done as the exempt portion of the record could not be severed, the RM offered the Applicant an opportunity to obtain a transcript. In the course of [their] communications with the RM, several of which were with the assistance of legal counsel, the Applicant made clear that nothing other than the recording would satisfy [their] request.

[22] The circumstances of this review raise important questions about a public body's duty to assist in the context of a request for an audio recording. However, the principles apply equally to video and other electronic record holdings.

[23] The challenges of processing requests for audio/video recordings are not new. My office has had an opportunity to consider an individual's right to access audio recordings in other reviews. For example, in my office's [Review Report 098-2020](#), which involved an access to information request for an audio recording of a 911 call, I recommended that the Prince Albert Police Service (PAPS) research and implement software that it can use to sever audio recordings. I stated, at paragraph [30]:

... such software will enable the head of PAPS to exercise its discretion and release as much information as it can to applicants to ensure it remains accountable and transparent to the public, which is one of the main purposes of LA FOIP.

[24] In my office's [Review Report 023-2019, 098-2019](#), I considered a request for access to a video recording taken by the Saskatoon Police Service's (SPS) in-car camera system. The SPS stated that it did not have the capability to blur images from the video. I recommended that SPS implement technology that would enable it to do this.

[25] The exponential growth in the use of digital technologies by government organizations is well recognized. This has included an increase in the use of electronic meeting software, driven in part by the COVID-19 pandemic.

[26] When a public body plans to use electronic recording services or devices, it is essential that it consider in advance of implementation, how it will manage access to information requests while protecting exempt information. In the case of electronic meetings, public bodies should review their records retention/management, security and access to information policies, guidelines and bylaws to ensure that they address the records that will be generated as part of the electronic meeting process.

[27] This approach is described in my office's recently issued guidance entitled [Improving Access and Privacy with Records and Information Management](#), (dated February 2022) where I stated, at page 7:

When public bodies implement or plan to implement new information systems or technologies, it is essential that these tools be capable of functions that support access and privacy obligations under the acts.

[28] In this case, the RM should have considered what processes it must have in place for editing and making the recording available in a timely and cost-efficient manner before it implemented its electronic meeting process.

[29] I note that Zoom recordings are in formats that can be edited by widely available software. Further information about these services is readily available on Zoom's [website](#) where it states:

Zoom recording formats — MP4 and M4A — are easy to edit in virtually any editing software, like ScreenFlow, Camtasia, iMovie, or any of the video solutions in Adobe

Creative Cloud. Go to your account settings to choose an option to optimize your recording for a 3rd-party video editor for the best results.

[30] The RM's proposed method of providing access – transcribing the recording – is neither timely nor cost-effective. Such a method would create a barrier to access to information.

[31] Turning to the RM's section 7 of LA FOIP response, I note that it was not forthcoming, informative and transparent because it did not include any information or explanation about why it was unable to provide the Applicant with an electronic copy of the audio recording. It was not sufficient for the RM to state that "provision of a transcript is an appropriate means to provide" access to the record knowing that the Applicant was seeking access to a copy of the audio recording. While the RM asserted that "it explained its position clearly" to the Applicant, no further details were provided in its submission. In my view, a reasonable person would have expected the RM to have a discussion with the Applicant about the options for providing them with a redacted electronic copy of the audio recording. For these reasons, I find that the RM did not make reasonable efforts to respond to the Applicant openly as required by section 5.1(1) of LA FOIP.

[32] I also find that the RM failed to meet its requirement to respond to the Applicant accurately given that its section 7 of LA FOIP response did not consider widely available options for editing audio recordings.

[33] As noted above, in some circumstances, a reasonable effort to assist could also include consideration of whether records can be made available outside the access to information process. This case is an example of such a circumstance. As the audio recording at issue here was a recording of an open public meeting, the RM should have considered whether the recording could be made publicly available on its website. If it had not considered this option prior to making the recording, it should have done so once it received the Applicant's request for a copy of the recording. Other local authorities are routinely making video and/or audio recordings of their public meetings available on their website. See for example, the [City of Fort Saskatchewan](#), [R.M. of McKillop](#), [City of Regina](#) and [City of Weyburn](#).

[34] A complete response to the Applicant's request would include a consideration of widely available free redaction software and whether the audio recording should be made available to the Applicant outside the access to information process. I find that the RM did not meet its duty to respond to the Applicant completely.

[35] In summary, the RM should have considered and developed processes to enable it to provide requesters with copies of the recording of its council meetings before it implemented electronic public meetings. It also should have considered whether recordings of its public meetings should be made routinely available on its website. These actions would have ensured compliance with the requirement to respond to the Applicant's request openly, accurately, and completely. For all these reasons, I find that the RM did not meet its duty to assist pursuant to section 5.1(1) of LA FOIP.

IV FINDING

[36] I find that the RM did not comply with the duty to assist in section 5.1(1) of LA FOIP.

V RECOMMENDATIONS

[37] I recommend that the RM take steps to ensure that it acquires and implements technology or services that would enable it to redact audio from audio recordings.

[38] I recommend that the RM take steps to make its recordings of open public meetings routinely available to the public.

Dated at Regina, in the Province of Saskatchewan, this 3rd day of May, 2022.

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