



REVIEW REPORT 214-2022

Resort Village of Candle Lake

January 11, 2023

Summary:

The Applicant submitted an access to information request to the Resort Village of Candle Lake (RVCL). After not receiving a response from RVCL, the Applicant requested my office undertake a review. As of the date of the issuance of this Report, more than four months have passed since the Applicant submitted their request and RVCL has still not provided a response. The Commissioner found that RVCL's failure to respond to the Applicant is not in compliance with section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner recommended RVCL respond to the Applicant within seven days of the issuance of this Report and waive or refund any associated fees.

I BACKGROUND

[1] On September 1, 2022, the Resort Village of Candle Lake (RVCL) received an access to information request from the Applicant as follows:

All the records identified by Ronald J. Kruzeniski, Q.C.
Saskatchewan Information and Privacy Commissioner
the IOP on March 30, 2022 in Review Report 084-2020, 085-2020, 086-2020, 088-2020, 090-2020, 091-2020, 092-2020...

[2] On November 4, 2022, the Applicant requested a review by my office advising they had not received a response from RVCL to their access to information request.

[3] My office followed up with RVCL by telephone and email to determine when it intended to provide a response to the Applicant's access to information request. As the RM did not

provide a date, on December 7, 2022, my office notified RVCL and the Applicant that my office would be undertaking a review. My office requested RVCL provide a submission by January 6, 2023, addressing its decision not to respond to the Applicant's access to information request within the legislated timeline. My office also invited the Applicant to provide representations for my consideration in this review.

- [4] On January 3, 2023, my office sent a reminder email to RVCL that the deadline date for its submission was approaching. My office noted that after this date it would proceed with preparing a Report on this matter. My office did not receive a response and on January 9, 2023, my office emailed RVCL indicating that we would be proceeding to prepare this Report without RVCL's submission.

II RECORDS AT ISSUE

- [5] As this is a review of RVCL's compliance with section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [6] RVCL qualifies as a "local authority" pursuant to subsection 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to undertake this review.

2. Did RVCL comply with section 7 of LA FOIP?

- [7] 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.

[8] Section 7 of LA FOIP requires a local authority to provide a written response to an applicant within 30 days of receiving an access to information request. Section 7 of LA FOIP provides, in part, as follows:

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

...

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

...

(5) A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.

[9] As of the date of the issuance of this Report, my office has not been notified that RVCL has provided its section 7 response to the Applicant. It has been almost four and a half months since RVCL received the Applicant's access to information request. As noted in subsection 7(5) of LA FOIP, where no response is provided, it is deemed that the local authority has refused access to responsive records. At this point, 132 days have passed with no response, and I have not been notified of any intentions for RVCL to provide any response. As such, RVCL has refused to give access pursuant to subsection 7(5) of LA FOIP; therefore, I find RVCL did not comply with section 7 of LA FOIP. I recommend that within seven days of issuance of this Report that RVCL provide its section 7 response to the Applicant. Because of its lateness, I also recommend RVCL waive or refund any fees associated with this request (see [Review Report 197-2020](#) where I have made a recommendation on this basis before).

[10] I add that RVCL's delay is unacceptable. When a local authority fails to respond to an access request, it affects the access rights of individuals. Section 5 of LA FOIP provides that every person has the right to records in the possession or under the control of a local authority, subject to exemptions. Access delayed is access denied. Without a response either providing access to the requested records, or denying access and providing an

explanation for why the records cannot be released, an applicant is also limited in their ability to request a review by my office.

[11] Further, my office requested that RVCL provide a submission addressing its decision not to respond to the Applicant's access to information request within the legislated timeline. As of the date of issuance of this Report, RVCL has not provided my office with a submission. I ask that RVCL take note that section 43 of LA FOIP outlines the powers of the Commissioner as follows:

43(1) Notwithstanding any other Act or any privilege available at law, the commissioner may, in a review:

(a) require to be produced and examine any record that is in the possession or under the control of a local authority; and

(b) enter and inspect any premises occupied by a local authority.

(2) For the purposes of conducting a review, the commissioner may summon and enforce the appearance of persons before the commissioner and compel them:

(a) to give oral or written evidence on oath or affirmation; and

(b) to produce any documents or things;

that the commissioner considers necessary for a full review, in the same manner and to the same extent as the court.

(3) For the purposes of subsection (2), the commissioner may administer an oath or affirmation.

[12] In the future, should RVCL fail to provide my office with the information necessary to conduct a review, it may find I will exercise my powers to summon persons to appear and compel them to provide this information.

IV FINDINGS

[13] I find that I have jurisdiction to undertake this review.

[14] I find that RVCL did not comply with section 7 of LA FOIP.

V RECOMMENDATIONS

[15] I recommend RVCL respond to the Applicant's access to information request within seven days of the issuance of this Report.

[16] I recommend RVCL waive or refund any fees associated with this request.

Dated at Regina, in the Province of Saskatchewan, this 11th day of January, 2023.

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