



## **REVIEW REPORT 336-2023**

### **Rural Municipality of Reford No. 379**

**July 31, 2024**

#### **Summary:**

The Applicant made an access to information request to the Rural Municipality of Reford No. 379 (RM) under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The RM issued a fee estimate. After the Applicant paid the amount owing on the fee estimate, the RM issued its decision. The Applicant asked the A/Commissioner to review whether the RM's section 7 decision complied with LA FOIP, the reasonableness of the fees charged by the RM, and the reasonableness of the RM's search. The A/Commissioner found that the RM did not comply with section 7 of LA FOIP and did not conduct a reasonable search. The A/Commissioner also found that the RM's fee did not comply with section 7 of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations). The A/Commissioner recommended that the RM, within 30 days of issuance of this Report, make any necessary changes to ensure that its policies and procedures comply with sections 7 and 9 of LA FOIP and the LA FOIP Regulations. He also recommended that within 30 days of issuance of this Report, the RM refund the Applicant the \$90.00 fee charged for providing access to the records in question. Further, he recommended that within seven days of issuance of this Report, the RM clarify the scope of the access to information request and within 30 days after that, it should conduct another search for responsive records. Finally, in the same time frame it should issue a section 7 decision to the Applicant without charging a fee.

#### **I BACKGROUND**

[1] The Applicant made an access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the Rural Municipality of Reford No. 379 (RM). The RM received the request on October 23, 2023. The request stated:

I am asking for a written, complete, response to my statement submitted to Council on September 14, 2023. Next, I want to know if banking [named individual]'s hours while [they] was collecting EI benefits caused the taxpayers to have to payback CRA. When you are bonded, how does something like this happen?

My statement was submitted 39 days ago, and I have had ZERO response from Council. I do not think it unreasonable to request an adequate response within the next 10 days, deadline November 2, 2023.

- [2] On October 27, 2023, the RM sent an email to the Applicant stating that upon receipt of the \$20.00 application fee, the request will be forwarded to the Access Officer.
- [3] On November 1, 2023, the Applicant paid the \$20.00 application fee.
- [4] On November 27, 2023, the RM issued a fee estimate to the Applicant which it sent by mail. The fee estimate stated that retrieval and review of responsive records was required. It estimated the fees to search for records to be \$60.00 for 120 minutes of work. It estimated the fee for preparing the record for disclosure to be \$60.00 for 120 minutes of work. After deducting \$30.00 for one-hour free work, it estimated a total fee of \$90.00 and sought a 50% deposit.
- [5] By November 28, 2023, the Applicant had not received a response to their request and asked my office to conduct a review of the RM's failure to respond within the time required under LA FOIP.
- [6] Subsequently, the Applicant received the RM's fee estimate. They paid the 50% deposit on December 5, 2023.
- [7] On December 15, 2023, the RM wrote to the Applicant stating that the information they requested "was prepared" and upon payment of the balance owing, "the information will be released to you."

[8] On December 18, 2023, the Applicant paid the final amount owing. The RM issued a decision pursuant to section 7 of LA FOIP dated December 12, 2023, but signed on December 13 and marked sent on December 18, 2023.

[9] The RM's decision stated:

1. [Named individual] is no longer a council member, present Council is not in position to comment on past actions of council members.

2. Current Council is not opposed to direct communication between ratepayers and foreman.

3. [Named individual] is no longer employed with the RM; present Council is not in a position to comment on past actions of previous administrator, nor any personnel related matters.

4. Municipal property has been handled in accordance with *The Municipalities Act* and insurance provisions.

5. Council Code of Conduct matters are deemed confidential and have been or are currently being addressed in accordance with municipal policies.

No costs were incurred by the taxpayers regarding [named individual].

Pursuant to Bylaw No. 01/2023 and No. 02/2023 these matters have been heard, addressed, and responded to by Council.

[10] On December 21, 2023, the Applicant asked my office to conduct a review of the RM's section 7 decision. They subsequently clarified that they wanted my office to review the timeliness of the section 7 decision, and the reasonableness of the fee charged and the search for records.

[11] My office sent a notice of the review to the Applicant on January 26, 2024, and to the RM on January 29, 2024, inviting them to provide a submission on whether the RM's section 7 decision complied with LA FOIP, the appropriateness of the fee and the reasonableness of its search for records.

[12] On March 5, 2024, the RM provided my office with a submission. The Applicant did not provide a submission.

## **II RECORDS AT ISSUE**

[13] As the issues in this review relate to compliance with section 7 of LA FOIP, the fees charged and the reasonableness of the RM's search, there are no records at issue.

## **III DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction?**

[14] The RM qualifies as a "local authority" pursuant to subsection 2(1)(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

### **2. Did the RM's response to the Applicant comply with section 7 of LA FOIP?**

[15] The circumstances of this review raise issues about the timeliness of the RM's section 7 decision, the fee estimate process and the information included in its section 7 decision.

[16] Subsection 7(2) of LA FOIP requires that local authorities respond to an access to information request within 30 days after the application is made. That provision also sets out the information that must be included in the response. Further requirements are set out in subsection 7(3) of LA FOIP. The relevant parts of these provisions state:

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;

...

(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;

...

(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.

[17] Pursuant to subsection 9(2) of LA FOIP, the RM must issue a fee estimate where the amount of the fee will exceed the prescribed amount. Subsection 6(1) of *The Local Authority Freedom of Information and Protection of Privacy Act Regulations* (LA FOI Regulations) states that the prescribed amount is \$100.00. Therefore, there is no requirement to issue a fee estimate where the fee will be less than \$100.00. Accordingly, there was no requirement to issue a fee estimate in this case given that the fee was set at \$90.00.

[18] Where a fee estimate is issued, as it was in this case, the timelines for responding are calculated as set out in section 9 of LA FOIP. Pursuant to subsection 9(3) of LA FOIP, the 30-day deadline to respond to an access request is suspended once the fee estimate is sent and remains suspended until the applicant notifies the local authority that the applicant wishes to proceed with the application (*Guide to LA FOIP*, Chapter 3, “Access to Records”, updated: June 29, 2021 [*Guide to LA FOIP*, Ch. 3], at page 57).

[19] When an applicant pays the 50% deposit referred to in subsection 9(4) of LA FOIP, this qualifies as an indication that they wish to proceed. At this point, the clock is no longer suspended, and the local authority has whatever days are left within its original 30 days to complete the work and issue the response (*Guide to LA FOIP*, Ch. 3 at page 57).

[20] Subsections 9(2), (3) and (4) of LA FOIP state:

**9(2)** Where the amount of fees to be paid by an applicant for access to records is greater than a prescribed amount, the head shall give the applicant a reasonable estimate of the amount, and the applicant shall not be required to pay an amount greater than the estimated amount.

(3) Where an estimate is provided pursuant to subsection (2), the time within which the head is required to give written notice to the applicant pursuant to subsection 7(2) is suspended until the applicant notifies the head that the applicant wishes to proceed with the application.

(4) Where an estimate is provided pursuant to subsection (2), the head may require the applicant to pay a deposit of an amount that does not exceed one-half of the estimated amount before a search is commenced for the records for which access is sought.

[21] As the timeline in subsection 7(2) of LA FOIP, read together with section 9 of LA FOIP, is calculated from the date the application was made, I must first determine that date.

[22] As noted above, the access to information request was received on October 23, 2023, and the application fee was paid by the Applicant on November 1, 2023. In Review Reports [336-2017](#) and [314-2023](#), my office stated that a local authority does not have to begin processing an access to information request until it receives the payment of the application fee. Therefore, where the application fee is paid after the date the access request is submitted, my office will use the date that the application fee was received for the purpose of calculating the deadline for a response under section 7 of LA FOIP.

[23] The date of the receipt of the application fee was November 1, 2023. Therefore, November 1, 2023, is the date the application was made, and I will use it for calculating the timeliness of the RM's section 7 decision.

[24] The fee estimate was sent on November 27, 2023, which was 26 days after payment of the application fee by the Applicant. This stopped the clock from running on the 30-day deadline. On December 5, 2023, the Applicant paid the deposit. This had the effect of starting the clock to run again and left the RM with four days to issue its section 7 decision.

[25] The RM wrote to the Applicant on December 15, 2023, asking for payment of the final amounts owing and stating that the information will be released once the payment was made. The final amount owing was paid on December 15, 2023. The RM did not issue its section 7 decision until December 18, 2023.

[26] There are four concerns with how the RM managed this process:

- The fee estimate and time taken to issue the fee estimate decision;
- Time taken to issue a section 7 decision;

- Authority to demand payment of the balance owing on the fee estimate before issuing its section 7 decision; and
- The content of the RM's section 7 decision.

***The fee estimate and time taken to issue the fee estimate decision***

[27] By issuing a fee estimate when it was not necessary to do so, the RM unnecessarily stopped the clock on the 30-day deadline for responding to the request. This resulted in unnecessary delays in responding to the access to information request. I recommend that the RM, within 30 days of the issuance of this Report, review its policies and procedures for responding to access to information requests and make any necessary changes to ensure that its processes for issuing fee estimates and calculating fees comply with best practices and LA FOIP.

[28] In this case, even if providing a fee estimate was appropriate, it was issued very late in the 30-day timeline for responding - on the 26<sup>th</sup> day after the application was made. At that point, there were only four days left for responding to the access to information request.

[29] The result was that when the deposit was paid on December 5, 2023, the clock started running again on the 30-day deadline. The 30<sup>th</sup> day fell on Saturday, December 9, 2023. As the 30<sup>th</sup> day fell on a Saturday, applying the rules for the calculation of time set out in section 2-28 of *The Legislation Act*, the due date was the next working day, which was Monday, December 11, 2023. As the RM's section 7 decision was issued on December 18, 2023, it was seven days late. If the RM had issued its fee estimate earlier, it would have had more time to complete its section 7 decision and prepare records for release.

[30] In previous reports, I have recommended that local authorities issue fee estimates within the first 10 days of an access request being received so there is still time to process the request once a deposit is received (*Guide to FOIP*, Ch. 3, at p. 73).

[31] I find that the RM did not need to issue a fee estimate and its fee estimate was not issued within ten days after the application for access to information was made.

***Time taken to issue the section 7 decision***

- [32] Given that the section 7 decision was issued seven days after the expiry of the 30-day deadline, the RM did not issue it within the time required by subsection 7(2), read together with section 9 of LA FOIP. Therefore, I find that the RM did not comply with the timeline for responding to the access to information request set out in subsection 7(2) of LA FOIP.

***Authority to demand payment of the balance owing on the fee estimate before issuing its section 7 decision***

- [33] As noted above, the RM's correspondence of December 15, 2023, asked for payment of the balance owing from the fee estimate. However, the RM was required to issue its section 7 decision indicating what records or portions of records would be released or withheld upon payment of the balance and the reasons for its decision. By asking for payment of the balance owing without advising the Applicant what would be released, the RM placed the Applicant in the unfair position of having to pay for records without knowing what information or records would be released. I find that the RM should not have requested payment of the balance owing on the fee estimate without issuing its section 7 decision.

***Content of the RM's section 7 decision***

- [34] The RM's section 7 decision is set out in full above. It did not set out the reasons for the refusal of access to records. Nor did it identify the specific provisions of LA FOIP that were relied on to deny access. Therefore, I find that the RM did not comply with subsection 7(2)(d) of LA FOIP. I also find that the decision did not comply with subsection 7(3) of LA FOIP because it did not state that the Applicant may request a review by my office within one year after the notice is given.
- [35] To address these four concerns, I recommend that the RM, within 30 days of the issuance of this Report, review its policies and procedures relating to processing access to information requests and make any changes necessary to ensure that they:



- Comply with best practices and the rules in LA FOIP and the LA FOIP Regulations regarding fee estimates,
- Comply with subsection 7(2) and section 9 of LA FOIP, and
- Require the RM to include the information required by subsections 7(2)(d) and (3) of LA FOIP in the section 7 decisions.

**3. Did the RM comply with subsection 7(1) of the LA FOIP Regulations?**

[36] The Applicant has requested a review of the \$90.00 fee paid to the RM. Subsection 7(1) of the LA FOIP Regulations provides that fees cannot be charged when access to the record is refused. That provision states:

7(1) No fees are payable pursuant to subsections 5(2) to 5(4) where access to a record is refused.

[37] Given that the Applicant was denied access to the responsive records, the RM was not entitled to charge a fee. I find that the RM did not comply with subsection 7(1) of the LA FOIP Regulations. I recommend that the RM, within 30 days of the issuance of this Report, refund the Applicant the \$90.00 fee.

**4. Did the RM conduct a reasonable search for responsive records?**

[38] Section 5 of LA FOIP provides an applicant with a right of access to records in the possession or control of a local authority. It states:

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.

[39] Subsection 5.1(1) of LA FOIP states:

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] The *Guide to LA FOIP*, Ch. 3 at page 12, states that 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 efforts 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.
- [41] Regarding the obligation to search for records, the threshold to 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 or consider acceptable.
- [42] The *Guide to LA FOIP*, Ch. 3 also states at page 12, that a reasonable search is one in which an employee, experienced in the subject matter of the records, expends a reasonable effort to locate records which are reasonably related to the request. What is reasonable depends on the request and related circumstances. The local authority should provide my office with detailed information about its efforts to conduct a search.
- [43] A local authority may respond to an access to information request by stating that "records do not exist" in two circumstances. It may respond that way where its search for records did not produce records. Second, where records may exist, but they are not in the "possession or control" of the local authority (see my office's [Review Report 029-2021](#)).
- [44] Where the claim is that records do not exist, LA FOIP does not require that the local authority prove beyond a reasonable doubt that the records do not exist. The local authority need only provide a reasonable explanation for why the records would not exist.
- [45] The *Guide to LA FOIP*, Ch. 3 at pages 14 to 15, sets out some examples of the type of information that my office will consider in evaluating the search efforts. The following examples are relevant here:
- 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 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 subject.
- Consider providing a copy of your organization's record schedule and screen shots of the electronic directory (folders & subfolders).
- 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. For more on this, see my office's resource, [\*Using Affidavits in a Review with the IPC\*](#).

[46] As noted above, subsection 5.1(1) of LA FOIP also requires that local authorities explain the steps in the process and seek any necessary clarification on the nature or scope of the request within the legislated timeframe. How a local authority fulfils this duty to assist will vary according to the circumstances of each request (*Guide to LA FOIP*, Ch. 3, pp. 16-17).

[47] The requirement to respond accurately, set out in subsection 5.1(1) of LA FOIP means that 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.

- [48] I now turn to consider the RM's search efforts. The RM asserted, in its correspondence to my office dated January 15, 2024, that the search was conducted by the Head and the Administrator on December 11, 2023. It involved a search of file cabinets, the minute binder and electronic files, and it took four hours. No further information about the search was provided.
- [49] The Applicant believes that telephone text messages between councillors exist that may be responsive to their request, and they have provided some examples to my office.
- [50] I note that the wording of the request is vague and unclear. The Applicant appears to be asking questions as opposed to asking for access to records. I appreciate that this may have made the RM's search for responsive records challenging.
- [51] Given the unclear nature of the request, the RM should have contacted the Applicant after receiving the request to seek clarification of the records the Applicant was seeking. Doing so would have been consistent with its duty to assist the Applicant set out in subsection 5.1(1) of LA FOIP. It also would have helped the RM define the scope of a reasonable search. Because the RM did not do this, it did not meet its duty to assist.
- [52] In its submission, the RM did not describe the keywords used to conduct its searches or the type of records that it searched for. I also note that it appears that the RM's search did not include a search of councillors' records, including electronic devices that may have been used by them for RM business. For these reasons, I find that the RM did not conduct a reasonable search for records.
- [53] I recognize that for small local authorities with limited experience processing access to information requests, there may be challenges in ensuring compliance with LA FOIP. Additional resources are available through my office, such as my office's [Guide to LA FOIP, Chapter 3](#), [Steps to Charging Fees](#), [Best Practices for Responding to Access Requests](#), [Sample Operational Policy Access to Information and Checklist](#), and the webinar, [LA FOIP 101](#).

[54] I recommend that, within seven days of issuance of this Report, the RM contact the Applicant to seek clarification of the scope of the access to information request.

[55] I recommend that, within 30 days after the RM has clarified the scope of the access to information request, the RM conduct another search for responsive records, including any text messages and emails sent or received by councillors on any personal or RM issued devices used for RM business, issue a section 7 decision to the Applicant and not charge the Applicant a fee for processing the access to information request.

#### **IV FINDINGS**

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

[57] I find that the RM did not need to issue a fee estimate and it was not issued within ten days after the application for access to information was made.

[58] I find that the RM did not comply with the timeline for responding to the access to information request set out in subsection 7(2) and section 9 of LA FOIP

[59] I find that the RM should not have requested payment of the balance owing on the fee estimate without issuing its section 7 decision.

[60] I find that the RM did not comply with subsections 7(2)(d) and 7(3) of LA FOIP.

[61] I find that the RM did not comply with subsection 7(1) of the LA FOIP Regulations.

[62] I find that the RM did not conduct a reasonable search for records.

## V RECOMMENDATIONS

[63] I recommend that the RM, within 30 days of the issuance of this Report, review its policies and procedures relating to processing access to information requests and make any changes necessary to ensure that they:

- Comply with best practices and the rules in LA FOIP and the LA FOIP Regulations regarding fee estimates,
- Comply with subsection 7(2) and section 9 of LA FOIP and
- Require the RM to include the information required by subsections 7(2)(d) and (3) of LA FOIP in the section 7 decisions.

[64] I recommend that the RM, within 30 days of the issuance of this Report, refund the Applicant the \$90.00 fee charged for access.

[65] I recommend that the RM, within seven days of issuance of this Report, contact the Applicant to seek clarification of the scope of the access to information request.

[66] I recommend that the RM, within 30 days after the RM has clarified the scope of the access to information request, conduct another search for responsive records, including any text messages and emails sent or received by councillors on any personal or RM issued devices used for RM business, issue a section 7 decision to the Applicant and not charge the Applicant a fee for processing the access to information request.

Dated at Regina, in the Province of Saskatchewan, this 31<sup>st</sup> day of July, 2024.

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