



REVIEW REPORT 338-2023

Resort Village of Aquadeo

June 25, 2024

Summary:

The Applicant made an access to information request to the Resort Village of Aquadeo (Village) under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Village issued a section 7 decision releasing records in full. The Applicant asked the Commissioner to review whether the Village's section 7 decision complied with LA FOIP, the timeliness of its response, the reasonableness of its search and the manner of providing access. The Commissioner found that the Village did not comply with section 7 of LA FOIP. He also found that the Village did not conduct a reasonable search. He further found that the Village provided access to the records in an appropriate manner. The Commissioner recommended that the Village, within 30 days of the issuance of this Report, review its policies and procedures and make any further changes necessary to ensure it complies with section 7 of LA FOIP. The Commissioner also recommended that the Village, within 30 days of the issuance of this Report, complete another search for responsive records and issue a new section 7 decision which meets the requirements of section 7 of LA FOIP, includes details of the Village's search efforts, and releases any records identified during the search to the Applicant, subject to exemptions. He also recommended that the Village, within 30 days of the issuance of this Report, provide his office with a copy of the new section 7 decision.

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 Resort Village of Aquadeo (Village). The Village received the request on September 18, 2023, along with the application fee. The Applicant asked for a fee waiver and access to the following records, dated from April 2023 to the date of the request:

- I wish copies of meetings dealing with land [...] and any land behind lot [...]. this would include any minutes to council meetings and with the owner of the land. I wish copies of the public notices pertaining to the said lots and land. I wish copies of the maps show said land and the maps that the public notice mentioned. I wish copies of the meetings dealing with 50-50 split cost the survey private and village land. I wish to know what Option 3 is in the deals with land with Aquadeo Beach Resort Ltd. and Resort Village of Aquadeo. I wish copies of any correspondence with Northbound about the above-mentioned land and [...]. I wish a copy of meeting about Option 3 stated on line 148/23 stating Option 3 as attached to and forming part of these minutes. I wish copies of emails sent pertaining to my question about [...] land. I wish a quote on any cost in compiling these requests for email.
- [2] On September 18, 2023, the Village sent an email to the Applicant acknowledging receipt of the request. It added that, “before the answers are sent, we are seeking our legal advisor” but it did not explain why this consultation was necessary.
- [3] On November 9, 2023, the Applicant filed a request for a review with my office stating that the Village had not responded to the access to information request. My office opened Review File 296-2023.
- [4] On November 17, 2023, the Village provided the Applicant with the responsive records in person during a Council meeting.
- [5] Later the same day, the Village sent an email to the Applicant with its section 7 decision, 11 pages of records and responses to questions posed by the Applicant. My office closed Review File 296-2023 because the Village was no longer in a deemed refusal position.
- [6] On December 21, 2023, the Applicant wrote to my office requesting a review of the Village’s decision. My office opened this review file to address the outstanding issues.
- [7] On February 16, 2024, my office sent a notice of review to the Village and the Applicant inviting them to provide a submission as to whether the Village made a reasonable effort to search for responsive records, the manner of access, the timeliness of the section 7 decision, and whether the decision complied with section 7 of LA FOIP.

[8] On February 23, 2024, the Applicant provided a submission to my office. On March 11, 2024, the Village provided its submission.

II RECORDS AT ISSUE

[9] As the issues in this review relate to reasonable search, the manner of access, the timeliness of the section 7 decision and whether the decision complied with section 7 of LA FOIP, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[10] The Village 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 Village comply with section 7 of LA FOIP?

[11] The circumstances of this review raise issues about the timeliness of the Village’s section 7 decision and the information included in its section 7 decision.

[12] Subsection 7(2) of LA FOIP requires local authorities to 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;

(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.

[13] The 30-day deadline for responding to an access to information request is set out in subsection 7(2) of LA FOIP. The due date is calculated from the date the application was made – September 18, 2023.

[14] The Village’s submission did not directly address the timeline for responding to the Applicant. However, it offered the following background information:

The RV of Aquadeo, is a small resort village that is not open 5 days a week and have two new Administrators. The CAO started in March of 2023 and is only in the office one day a week. The assistant CAO is new to the administration field and started in June 2023 and in office 3 days a week.

[15] Applying the rules for the calculation of time set out in section 2-28 of *The Legislation Act*, the due date for the section 7 decision was October 18, 2023. The Village issued its section 7 decision on November 17, 2023 – 60 days after the date the application was made. Therefore, the section 7 decision was not sent within the time required by subsection 7(2) of LA FOIP.

[16] I now turn to consider the content of the Village’s section 7 decision and if it was deficient.

[17] In response to the Applicant’s access to information request, the Village provided an undated letter and records at a Council meeting on November 17, 2023. That same day it sent an email to the Applicant which stated: “Attached is a copy of the papers that the Council submitted to you during our November 17, 2023 meeting.” Attached to the email were the following documents, which were released in full:

- Copy of the receipt for payment of the application fee,

- Undated letter setting out questions posed by the Applicant with its responses. In response to some questions, the Village stated that no records existed.
- Copies of Minutes of Regular Meetings of Village Council,
- Agendas,
- Statement of Financial Activities, and
- Map of proposed trailer court roads.

[18] In the undated letter to the Applicant described above, the Village suggested that there were additional responsive records, including records that may relate to a third party. However, it did not explain why those records were withheld from the Applicant. The Village's undated letter stated:

8. Quote on compiling all this information

a. could be as high as \$2,000.00 as we have to deal with our legal consultant and Northbound to get information and also investigate in office for any further minutes and emails. There are a lot of 3rd party information that seems to be requested in this Form and therefore that information would need to be redacted as it would need the 3rd party's approval prior to obtaining the information.

[19] In its submission, the Village asserted that it sent a "third-party release form" seeking authorization to release information. It added that the third party denied its consent to release the information.

[20] For the purposes of this analysis, I will treat the Village's email and its undated letter as its section 7 decision. The section 7 decision was deficient in that it was missing the following elements required by section 7 of LA FOIP:

- It did not inform the Applicant that the information was being provided in response to their access to information request. It did not set out the manner in which access would be given, such as if it would be provided in person or by email. Therefore, it did not comply with the requirements in subsection 7(2)(a) of LA FOIP.
- It did not state whether access was being refused to any responsive records, other than to imply that some of the information involved a third party and was withheld because the Village did not have consent to release it. Further it did not identify the

specific provisions of LA FOIP the Village relied on to deny access. Therefore, it did not comply with subsection 7(2)(d) of LA FOIP.

- The section 7 decision stated that some records did not exist, and it offered an explanation as to why those records did not exist. While the Village correctly included this detail, it should have referenced subsection 7(2)(e) of LA FOIP in its decision.
- Finally, the section 7 decision did not inform the Applicant of their right to request a review by my office within one year. Accordingly, the Village did not comply with subsection 7(3) of LA FOIP.

[21] As a consequence of the deficiencies in the Village's section 7 decision, the Applicant does not know how many responsive records have been identified, how many have been released or withheld and the reasons for the Village's refusal to provide access.

[22] In correspondence provided to my office, the Village stated that since issuing its section 7 decision in this matter it has taken steps to improve its processes for responding to access to information requests. It explained that at the relevant time its administrative staff were new to their roles and were unfamiliar with LA FOIP and its requirements. It added:

The Resort Village has since undertaken to implement a more vigorous policy that outlines the steps required when processing Information Requests. The administration and council are doing their best to do their due diligence and bring up to date our policies and procedures.

[23] I recognize that for some 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](#).

[24] These resources also include information about how to manage access to information requests that involve information related to third parties. Additional information about processing requests that involve third-party information can be found in my office's blog, [Third parties under FOIP and LA FOIP \(updated\)](#).

[25] My office welcomes requests to review programs, policies or procedures and provide feedback. If the Village would like to participate in a consultation, it should submit a request to my office using the following [Consultation Request Form](#).

[26] In summary, I find that the Village did not comply with section 7 of LA FOIP. I recommend that the Village, within 30 days of the issuance of this Report, review its policies and procedures and make any further changes necessary to ensure it complies with section 7 of LA FOIP. In doing so, it should consult the resources linked above.

3. Did the Village provide access to the records in an appropriate manner?

[27] The Applicant stated that they were provided with a copy of the section 7 decision and records in person at a Council meeting. The Applicant stated that they were not offered a different way to receive their response to the request. They objected given the expense involved in driving to the Village to collect the decision and the records.

[28] The Village acknowledges that the section 7 decision and the records were provided to the Applicant in person at this meeting. However, the Village also sent the decision and the records to the Applicant by email later that day. This is reflected in the Village's email dated November 17, 2023, which stated: "Attached is a copy of the papers that the Council submitted to you during our November 17, 2023 meeting."

[29] Section 10 of LA FOIP sets out the rules regarding the manner of access. Subsection 10(4) gives local authorities the discretion to provide applicants with a copy of the records or give them an opportunity to examine the records, if it is not reasonable to reproduce them. Section 10 of LA FOIP states in part:

10(1) If an applicant is entitled to access pursuant to subsection 9(1), a head shall provide the applicant with access to the record in accordance with this section.

...

(4) A head may give access to a record:

(a) by providing the applicant with a copy of the record; or

(b) where it is not reasonable to reproduce the record, by giving the applicant an opportunity to examine the record.

[30] In this case, the Village opted to give the Applicant a copy of the decision and records at the Council meeting and follow up by email. This is consistent with subsection 10(4) of LA FOIP which gives it the discretion as to whether to provide copies of the records or, where it is not reasonable to do so, to give the Applicant an opportunity to review them.

[31] I was provided with copies of emails exchanged between the parties prior to the November 17, 2023 Council meeting. Having reviewed the emails, it is not clear that the Applicant was invited to attend this Council meeting for the purpose of collecting the section 7 decision and records.

[32] While the Applicant asserts that they were required to attend the meeting for this purpose, their submission appears to contradict that. They stated:

On Nov 06/2023 I sent them an email telling them they were past their 30 days to process my request. Enclosed is an email I sent Nov 8/2023 at 433am [personal information redacted] asking again that all my questions be discussed.

On Nov 9/2023 I received an email inviting me to the regular council meeting on Nov 17/2023 at 11:30am. No mention of the LA FOIP.

On Nov 12/2023 I sent the village an email requesting the meeting rules and told them if I couldn't ask questions, I would not be there. If the meeting was going to be cut short, I would not be there.

On Nov 16/2023 I told them I would be coming and requested more information at this meeting. I asked them for my LA FOIP information. Not once did they ever mention the LA FOIP in their emails or the emails about the Nov 17th meeting.

[33] I find that there is insufficient information to conclude that the Village insisted the Applicant attend the November 17, 2023 Council meeting to collect the response to their LA FOIP request. For that reason and given that the Village provided the information to the Applicant by email dated November 17, 2023, I find that the Village provided access to the record in an appropriate manner.

[34] It appears from the circumstances before me that the Village could have avoided the confusion about the purpose of the invitation to attend this Council meeting if it had released the section 7 decision and the records earlier and ensured that it described how the Applicant could access the records as discussed above.

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

[35] Section 5 of LA FOIP provides an applicant with a right of access to records in the possession or under the 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.

[36] 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.

[37] 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 identify and search for records responsive.

[38] 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.

[39] 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.

[40] 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](#)).

[41] Where the local authority claims 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.

[42] 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](#).

[43] The Village asserted that it conducted a reasonable search for records. It stated:

When the office received the request, the CAO completed a physical search of; the office, including the storage room where all banker's boxes were searched, a thorough search of the minute book. The assistant CAO searched the computer, all emails, contacted a third-party contractor asking for them to search their records and contact ISC to search all land titles to ensure that the RV's records were correct. There was a third-party release request form sent as well for authorization to release information. That request was denied.

[44] The Applicant thinks that the Village's search was not reasonable. They believe that additional correspondence and reports involving Northbound must exist given that it was making public presentations on its work on a weekly basis.

[45] It is apparent from a review of the records released to the Applicant, including the undated letter to the Applicant noted above, that additional responsive records exist relating to Northbound. This was confirmed by the Village when it stated in its section 7 decision that it needs to "investigate in office for further minutes and emails." It also stated that there was a lot of "3rd party information that seems to be requested" and "that would need to be redacted." The information referenced by the Village in these passages was not identified in the section 7 decision and the related records were not released to the Applicant. For these reasons, I find that the Village did not conduct a reasonable search for records.

[46] I recommend that the Village, within 30 days of the issuance of this Report, complete another search for responsive records and issue a new section 7 decision to the Applicant which meets the requirements of section 7 of LA FOIP, includes details of the Village's search efforts, and releases any records identified during the search to the Applicant, subject to exemptions. I also recommend that the Village provide my office with a copy of the new section 7 decision.

IV FINDINGS

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

[48] I find that the Village did not comply with section 7 of LA FOIP.

[49] I find that the Village provided access to the records in an appropriate manner.

[50] I find that the Village did not conduct a reasonable search for records.

V RECOMMENDATIONS

[51] I recommend that the Village, within 30 days of the issuance of this Report, review its policies and procedures and make any further changes necessary to ensure it complies with the requirements in section 7 of LA FOIP.

[52] I recommend that, within 30 days of the issuance of this Report, the Village:

- complete another search for responsive records,
- issue a new section 7 decision to the Applicant which meets the requirements of section 7 of LA FOIP, includes details of the Village's search efforts, and releases any records identified during the search to the Applicant, subject to exemptions, and
- provide my office with a copy of the new section 7 decision.

Dated at Regina, in the Province of Saskatchewan, this 25th day of June, 2024.

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