



REVIEW REPORT 359-2021

Village of Neudorf

May 18, 2022

Summary: The Applicant submitted an access to information request to the Village of Neudorf (Village). The Applicant sought copies of five letters. The Village responded by providing a copy of one letter to the Applicant. The Applicant appealed to the Commissioner asserting that additional records should exist. The Commissioner found that the Village conducted a reasonable search for records. He recommended that the Village take no further action.

I BACKGROUND

[1] On October 12, 2021, the Village of Neudorf (Village) received the following access to information request from the Applicant:

Oct, Nov, Dec, Jan, Feb 2019, 2020 Reply letters to [Name of Applicant] from Village of Neudorf, [Names of council members], the special letter in part where as grants are going to pay for sewer infrastrucuter[sic] !! but [sic] i [sic] want all 5 Reply letter [sic]!

[2] In a letter dated November 24, 2021, the Village responded:

This is to inform you that your access request has been fully granted with what we can find. Enclosed is a copy of the record[s] you requested.

[3] Enclosed with the Village's response was the responsive record - a copy of a letter dated February 12, 2020.

[4] In an email dated December 18, 2021 to my office, the Applicant requested my office review the response by the Village. The Applicant asserted additional letters should exist

and indicated they had copies of letters that would have been responsive to their access to information request to support this assertion. Yet, the Village only provided a copy of the February 12, 2020 letter:

I already have some of these replies, now they can only find feb 12/20 replie [sic] letter!

- [5] In another email (dated December 21, 2021) to my office, the Applicant indicated that they had letters dated October and November 2019 and reiterated the point that the Village “left out” these letters:

Then how can I already have a letter from Oct, Nov 2019. In [sic] which they have left out?

- [6] In a third email to my office (dated December 28, 2021), the Applicant described a time when they brought letters to the Village office to prove records existed:

June of 2021 town administrator and councilor [name of council member]. I went home and brought some of the letters back to the village office. At first they said they have none. Then I started producing them, then she started saying she has them but wouldn't produce them. So I feel they are lying.

- [7] On December 30, 2021, my office notified the Village and the Applicant that my office would be undertaking a review of the efforts the Village undertook to locate letters responsive to the Applicant's access to information request.

II RECORDS AT ISSUE

- [8] At issue in this review is the Village's efforts to search for records responsive to the access request. Therefore, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[9] The Village is a “local authority” pursuant to section 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Therefore, I find that I have jurisdiction to conduct this review.

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

[10] The Village asserted that it provided the only letter it could locate in response to the Applicant’s access to information request. However, the Applicant asserted that additional letters exist. Where a local authority has indicated no further records exist and an applicant requests my office review that response, my office will review the local authority’s search efforts.

[11] A person’s right of access to records in the possession or under the control of a local authority is established in section 5 of LA FOIP, which provides:

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.

[12] The threshold that must be met is one of reasonableness. In terms of a local authority’s search efforts, a “reasonable” search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records reasonably related to the access to information request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances. Examples of information a local authority can provide to my office that may support its search efforts include the following:

- 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 were included in the search.
- For general requests – tie the subject matter of the request to the departments/divisions/branches 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
 - 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 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'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*, available on my office's website.

(*Guide to LA FOIP*, Chapter 3, “Access to Records”, updated June 29, 2021 [*Guide to LA FOIP*, Ch. 3.], pp. 8 – 9)

[13] The preceding list is intended to be a guide. Each case will require different search strategies and details depending on the records requested (*Guide to LA FOIP*, Ch. 3, p. 9).

[14] In its submission to my office, the Village indicated that it did the following to conduct a search for records:

- The Village’s paper records are stored in filing cabinets. It searched through the file folders entitled “Letters to Residents,” “Letters to Remedy,” “Utilities,” and “Complaints”.
- The Village then searched through its electronic records. In terms of keywords it used for its search, the Village searched the Applicant’s last name and full name. It also searched through file folders entitled “Letters to Residents” and “Complaints”. To be thorough, the Village also searched through its general file folders entitled “Office Documents” and “Misc”.
- The Village searched through council meeting minutes from 2017 to present to determine if there were any references to letters being issued to the Applicant. If so, that would provide it a reference point from which it could search for additional records. However, through its search through the council meeting minutes, it did not locate any references to letters being issued to the Applicant.

[15] In spite of its efforts, the Village did not locate any additional letters beyond the letter it did locate and had provided to the Applicant. Based on the wording of the Applicant’s access to information request where they requested letters from the Village to themselves, I find that the Village’s efforts to search and locate records responsive to the access to information request to be reasonable.

[16] However, as noted in the background of this Report, the Applicant asserted that they had copies of letters. This assertion was the basis for believing extra records exist. On April 20, 2022 and April 26, 2022, my office emailed the Applicant requesting that they provide copies of October and November 2019 letters, as well as any other letters they may have. On April 26, 2022, the Applicant forwarded to my office a copy of a December 6, 2021 fee estimate letter by the Village. This fee estimate letter is discussed in my office’s [Review](#)

[Report 014-2022, 015-2022, 016-2022, 017-2022, 018-2022](#). The Applicant then contacted my office asking what letters we were seeking. My office referred them to the email dated December 21, 2021 (as discussed in the background of this Report) where the Applicant said they had the October and November 2019 letters. The Applicant said the only letters they received were letters they had sent to an Intake Officer with my office. They said that my office would have all the letters. My office does not have any letters that would be evidence that the Village did not complete a reasonable search for records.

[17] Applicants must establish the existence of a reasonable suspicion that a local authority is withholding a record or has not undertaken an adequate search for a record. Sometimes this can take the form of having possession of or having previously seen a document that was not included with other responsive records or media reports regarding the record. The applicant is expected to provide something more than a mere assertion that a document should exist (*Guide to LA FOIP*, Ch. 3., p. 8).

[18] Based on the above, the Applicant did not present any supporting evidence that there would be more responsive records beyond the February 12, 2020 letter that the Village had already provided.

[19] I find that the Village has conducted a reasonable search for records. I recommend that the Village take no further action.

IV FINDINGS

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

[21] I find that the Village has conducted a reasonable search for records.

V RECOMMENDATION

[22] I recommend that the Village take no further action.

Dated at Regina, in the Province of Saskatchewan, this 18th day of May, 2022.

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