



Office of the
Saskatchewan Information
and Privacy Commissioner

DISREGARD DECISION 130-2021

Rural Municipality of North Qu'Appelle No. 187

June 9, 2021

Summary:

The Rural Municipality of North Qu'Appelle No. 187 (RM) applied to the Commissioner for authorization to disregard the Applicant's access to information request under subsection 43.1(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found that the Applicant's access to information request was repetitious and unreasonably interfered with the operations of the RM pursuant to subsection 43.1(2)(a) of LA FOIP. As such, the Commissioner authorized the RM to disregard the access to information request.

I BACKGROUND

[1] On May 5, 2021, the Rural Municipality of North Qu'Appelle No. 187 (RM) received an access to information request from the Applicant. The request was for:

Refer to attached for the details, they have not been completely answered or replied.

- April 28, 2021 Email Complaint
- March 22, 2021 Re: west boat launch
- April 26, 2021 Email Building Permits 2019, 2020, and 2021
- April 21, 2021 Email Grants Detail
- April 21, 2021 Email RM Shop Door Motion 2-417
- April 20, 2021 Email Inquiry on Motions 20-405 and 20-422
- April 16, 2021 Email Policy 2016 October
- April 12, 2021 Email RE: Hours Per Week
- April 12, 2021 Email RE: Fire Ban
- April 12, 2021 Email February 23, 2021 RM meeting (11:15 a.m.)
- April 12, 2021 Email April 05, 2021 RM Office Closed

- April 12, 2021 Email Fwd: Spending
- April 12, 2021 RE: Re: Request Documentation
- April 12, 2021 RE: RE: Road Allowance North
- April 12, 2021 Fwd: FW: RE: Breach In Privacy of Emails
- April 12, 2021 Fwd: Request January 29, 2021 File 21-056 Code of ethics Payments
- March 31, 2021 RE: RE: RE: Code of Ethics Allegation File 4070
- March 22, 2021 Re: west boat launch
- March 02, 2021 Case Number 21-128
- February 26, 2021 RE: Code of Ethics Investigation

Also requesting a list of the GG2021.02 Policy (RIC) Requests, Inquires, Complaints that I had sent in showing what was done to close the case number on the RM side.

Also request copies of the Committee Meeting Minutes (Finance, Personnel and Works) from 2020 to 2021 present.

Also request the correspondence from the RM meetings. For 2021 they are not on the website for viewing.

- [2] The RM did not respond to the Applicant's request. Instead, on May 13, 2021, it made an application to my office seeking authority under section 43.1 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to disregard the request on the grounds that the request was repetitious, would unreasonably interfere with the operations of the RM, was vexatious and was not made in good faith. Subsection 43.1(3) of LA FOIP suspends the time for responding to a request where the local authority involved has sought relief under section 43.1 of LA FOIP.
- [3] On May 13, 2021, my office advised the RM that it could not proceed with the application as it had not included all of what my office required. On May 14, 2021, my office received additional materials from the RM and was able to proceed.
- [4] On May 14, 2021, my office provided notification to the RM and the Applicant that I would be considering the application to disregard the access to information request. The Applicant was invited to provide representations by May 24, 2021.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[5] The RM is a “local authority” pursuant to subsection 2(f)(i) of LA FOIP. Thus, I have jurisdiction to consider this application to disregard.

2. Should the RM’s application pursuant to subsection 43.1(2)(a) of LA FOIP be granted?

[6] Section 43.1 of LA FOIP provides local authorities the ability to apply to the Commissioner requesting to disregard an access to information request or a correction request. Section 43.1 of LA FOIP provides as follows:

43.1(1) The head may apply to the commissioner to disregard one or more applications pursuant to section 6 or requests pursuant to section 31.

(2) In determining whether to grant an application or request mentioned in subsection (1), the commissioner shall consider whether the application or request:

(a) would unreasonably interfere with the operations of the local authority because of the repetitious or systematic nature of the application or request;

(b) would amount to an abuse of the right of access or right of correction because of the repetitious or systematic nature of the application or request; or

(c) is frivolous or vexatious, not in good faith or concerns a trivial matter.

(3) The application pursuant to subsection 6(1) or the request pursuant to clause 31(1)(a) is suspended until the commissioner notifies the head of the commissioner’s decision with respect to an application or request mentioned in subsection (1).

(4) If the commissioner grants an application or request mentioned in subsection (1), the application pursuant to subsection 6(1) or the request pursuant to clause 31(1)(a) is deemed to not have been made.

(5) If the commissioner refuses an application or request mentioned in subsection (1), the 30-day period mentioned in subsection 7(2) or subsection 31(2) resumes.

[7] An application to disregard is a serious matter as it could have the effect of removing an applicant’s express right to seek access to information. However, LA FOIP recognizes that not all access to information requests are appropriate. Section 43.1 of LA FOIP exists to preserve the proper intent and functioning of the Act. Former British Columbia

Information and Privacy Commissioner (BC IPC), David Loukidelis, said the following about the role of the equivalent provision in British Columbia's Act:

...Access to information legislation confers on individuals such as the respondent a significant statutory right, *i.e.*, the right of access to information (including one's own personal information). All rights come with responsibilities. The right of access should only be used in good faith. It must not be abused. By overburdening a public body, misuse by one person of the right of access can threaten or diminish a legitimate exercise of that same right by others, including as regards their own personal information. Such abuse also harms the public interest, since it unnecessarily adds to public bodies' costs of complying with the Act. Section 43 exists, of course, to guard against abuse of the right of access...

(BC IPC Order 99-01 at p. 7)

[8] In its application to my office, the RM submits that the access to information request should be disregarded pursuant to subsections 43.1(2)(a), (b) and (c) of LA FOIP. I will begin by considering subsection 43.1(2)(a) of LA FOIP.

[9] In order for subsection 43.1(2)(a) of LA FOIP to be found to apply, the local authority must demonstrate that an applicant's access to information request interferes unreasonably with the operations of the local authority due to its repetitious or systematic nature. Both parts of the following test are considered:

1. Is the request for access repetitious or systematic?
2. Does the repetitious or systematic request unreasonably interfere with the operations of the local authority?

[10] I will consider each of these questions.

1. Is the request for access repetitious or systematic?

[11] *Repetitious* requests are requests that are made two or more times (BC IPC Order F10-01 at paragraph [16]).

[12] *Systematic* requests are requests made according to a method or plan of acting that is organized and carried out according to a set of rules or principles (BC IPC Order F13-18

at paragraph [23]). It includes a pattern of conduct that is regular or deliberate (Alberta Information and Privacy Commissioner (AB IPC) Request to Disregard F2019-RTD-01 at p. 9).

[13] Factors that can be considered when determining if requests are repetitious or systematic are as follows:

- Does the applicant ask more than once for the same records or information?
- Are the requests similar in nature or do they stand alone as being different?
- Do previous requests overlap to some extent?
- Are the requests close in their filing time?
- Does the applicant continue to engage in a determined effort to request the same information (an important factor in finding whether requests are systematic, is to determine whether they are repetitious)?
- Is there a pattern of conduct on the part of the applicant in making the repeated requests that is regular or deliberate?
- Does the applicant methodically request records or information in many areas of interest over extended time periods, rather than focusing on accessing specific records or information of identified events or matters?
- Has the applicant requested records or information of various aspects of the same issue?
- Has the applicant made a number of requests related to matters referred to in records already received?
- Does the applicant follow up on responses received by making further requests?
- Does the applicant question the content of records received by making further access requests?
- Does the applicant question whether records or information exist when told they do not?
- Can the requests be seen as a continuum of previous requests rather than in isolation?

(New Brunswick Information Privacy Commissioner (NB IPC) Interpretation Bulletin, *Section 15 – Permission to disregard access request*)

[14] In its application to my office, the RM asserted that parts of the access to information request received May 5, 2021, are the same as a previous request. In its application, the RM stated:

A couple items requested in the applicant's new request were previously requested on August 6, 2020, in a file that is currently with your office.

[15] Evidence of previous requests is relevant to the determination of whether the current request is repetitious or systematic (AB IPC Disregard F2019-RTD-01 at p. 9). Therefore, I will take into consideration all of the Applicant's previous requests when making this decision.

[16] Upon review of the May 5, 2021 request and a previous request that is currently part of a review by my office under file 239-2020, both requests include an attachment where the Applicant lists items being sought. Although the RM did not indicate which records in the list are being asked for more than once, I was able to identify some overlap between the two requests. Specifically, in both requests the Applicant has asked for copies of all of the RM's Committee Meeting Minutes for 2020.

[17] It also appears that the Applicant's May 5, 2021 access to information request lists a number of emails the Applicant had sent to the RM between February 2021 and April 2021. Some of the emails ask the RM questions and other ask for records. The Applicant indicates in the access to information request that some of the emails have not been completely answered or replied to. For those the Applicant was not satisfied with, the Applicant has now asked again for in the May 5, 2021 access to information request. From reviewing some of these emails, it is clear that the Applicant is asking again for the same information.

[18] If the Applicant was not satisfied with the response from the RM, or the lack of response, the option was to request a review by my office rather than ask for the same records again.

[19] There are a few clarifying points I wish to make for both the Applicant and the RM in terms of what LA FOIP requires. It is important for the Applicant to know that LA FOIP does

not require an RM to answer questions that come in an access to information request. For example, access to information requests that ask why the RM made certain decisions. LA FOIP is about gaining access to records. Therefore, the RM is not required under LA FOIP to answer questions posed by the Applicant. However, the RM does have a duty to answer questions as to whether it has responsive records. Further, an RM is not obligated to create records which do not exist in order to respond to an access to information request (*Guide to LA FOIP, Chapter 3: Access to Records*, p. 6).

[20] I also caution the Applicant here. It appears the Applicant sends numerous emails to the RM asking questions about decisions it has made such as funding and payment decisions. When the RM does not respond, the Applicant makes a formal access to information request and lists the numerous emails the RM had not responded to thereby rolling the emailed questions into a formal LA FOIP process. I will not deal with questions posed by the Applicant to the RM as LA FOIP does not require the RM to respond to such questions. For example, in the May 5, 2021 access request, the Applicant lists the email: April 12, 2021 Fwd: Request January 29, 2021 File 21-056 Code of ethics Payments. Upon review of that email, it appears the Applicant is asking the RM Council to review a decision because there was no motion to support the spending. The email ends with “How is this expense approved when some councillors had expenses and others not?”

[21] However, where the Applicant’s emails asked for records from the RM and the RM ignored those emails, this is problematic. As part of the RM’s disregard application to my office, it indicated that the RM Council had passed a resolution to allow staff to ignore the “barrage of trivial requests”. My office inquired about the resolution and requested a copy. The RM indicated in its response that:

The office has been in receipt of numerous repetitious and general inquiries on a daily basis from a specific small grouping of ratepayers and former Council member. A sampling of those emails are included with the RM’s Application to Disregard. The resolution was made by Council after they reviewed some emails and found more than 1 email with threads of 6 or more back and forth comments between requestor and administration as the requestor does not seem satisfied with the responses.

[22] The resolution passed by the RM Council states:

21-213 RATEPAYER EMAIL CORRESPONDENCES/[NAME]

“THAT Council authorizes Administration staff, in the interest of the staff’s mental well-being, to not respond to the constant barrage and large volume of email communications.”

- [23] While I understand the difficulty when an RM receives a barrage of communications, I caution the RM that a Council resolution cannot relieve it of its obligations to respond to access to information requests under LA FOIP. Applicants do not have to submit an access to information request on *Form A* in order for it to be considered a request under LA FOIP. A request need only be in writing and include the elements found on *Form A* in order to be a valid request under LA FOIP. Section 2-26 of *The Legislation Act* supports this interpretation and provides:

2-26 If an enactment requires the use of a specified form, deviations from the form do not invalidate a form used if:

- (a) the deviations do not affect the substance;
- (b) the deviations are not likely to mislead; and
- (c) the form used is organized in the same way or substantially the same way as the form the use of which is required.

- [24] There is evidence that the RM does attempt to respond to the Applicant’s emails but the Applicant is not satisfied and continues to ask for records. An example is the email listed in the May 5, 2021 access request as: April 12, 2021 RE: Request for Documentation. This is an email chain that started with a request for records on March 10, 2021. The RM responded on March 11, 2021, indicating the records were in draft form and once finalized would be made publically available. The Applicant proceeded to ask again for the same records on March 11, 2021 and March 21, 2021. The RM responded again on March 22, 2021, indicating the draft records had still not been approved and sought clarification from the Applicant in terms of dates for what the Applicant was seeking. On March 22, 2021, the Applicant responded, but did not appear to provide the level of detail the RM was seeking and rather pointed to the dates given in the original email request of March 10, 2021. The Applicant followed up again asking for the records on April 12, 2021. The Applicant then added this email to the list on the May 5, 2021 request that is now under consideration for a disregard. The Applicant should be contacting my office to request a

review if the Applicant sent an email to the RM requesting access to records and did not receive a response or received an unsatisfactory response rather than asking again for the same records.

[25] The RM should consider utilizing the fee estimate provisions in LA FOIP and *The Local Authority Freedom of Information and Protection of Privacy Regulations* as part of its access to information procedures. The fee regime promotes and encourages applicants to be reasonable and to cooperate with local authorities in defining and clarifying their access to information requests (SK OIPC Review Report 2005-005 at [24]).

[26] Repetition is the act of repeating an act or thing. To ‘repeat’ an act or thing, in turn, is to do the act or thing over again one or more times. Requests that repeat a previous request, to which the RM has already responded, are obviously repetitious. However, requests that are considered sufficiently connected can also be found to be repetitious (BC IPC Decision F05-01 at [17]).

[27] In conclusion, I find that parts of the May 5, 2021 access to information request is “repetitious” as provided for in subsection 43.1(2)(a) of LA FOIP.

2. Do the repetitious or systematic requests unreasonably interfere with the operations of the local authority?

[28] In order to interfere with operations, the requests must obstruct or hinder the range of effectiveness of the local authority’s activities. The circumstances of the particular local authority is considered. For example, it would take less to interfere with the operations of a small municipality compared to a large ministry.

[29] *Unreasonably interfere* means going beyond the limits of what is reasonable or equitable in time and resources and the impact, which this use of resources would have on the local authority’s day-to-day activities (British Columbia Government Services, *FOIPPA Policy Definitions* available at <https://www2.gov.bc.ca/gov/content/governments/services-for-government/policies-procedures/foippa-manual/policy-definitions>).

[30] Factors that can be considered when determining if requests unreasonably interfere with the operations of the local authority are as follows:

- Are the requests large and complex, rather than confusing, vague, broadly worded, or wide-ranging (e.g. “all records” on a topic), without parameters such as date ranges?
- Did the local authority seek clarification and was it obtained?
- Did the clarification of the applicant’s requests, if obtained, provide useful details to enable the effective processing of the requests?
- Do the applicant’s requests impair the local authority’s ability to respond to other requests in a timely fashion?
- What is the amount of time to be committed for the processing of the request, such as:
 - number of employees to be involved in processing the request;
 - number of employees and hours expended to identify, retrieve, review, redact if necessary, and copy records;
 - number of total employees in the same office; and
 - whether there is an employee assigned solely to process access requests.

(NB IPC Interpretation Bulletin, *Section 15 – Permission to disregard access request*)

[31] The local authority must meet a high threshold of showing “unreasonable interference”, as opposed to mere disruption. It will usually be the case that a request for information will pose some disruption or inconvenience to a local authority. This is not cause to keep information from a citizen exercising their democratic and quasi-constitutional rights (AB IPC Request to Disregard F2019-RTD-01 at p. 12).

[32] The RM made a number of submissions. The following is a summary of some of the RM’s assertions:

- This is the second request for in excess of 30 unrelated items in a single application made to the RM in under 10 months;

- The last request took in excess of 90 person hours from administrative staff to fulfill;
- For the RM to facilitate this new request, the two administrative staff will be required to request permission from Council to reprioritize or cancel projects, extend legislated deadlines and work overtime to continue the daily operations of the local authority;
- The office is already understaffed with one person on medical leave, leaving the remaining two staff to delicately balance existing priorities, ongoing Covid-19 safety, and the influx of seasonal residents requiring assistance along with the staff members mental health;
- The Applicant has sent numerous emails with requests to the RM, some several times a day, which has prompted the Council to pass a resolution to allow staff to ignore the barrage of trivial requests;
- A couple of items requested in the Applicant's new request were previously requested on August 6, 2020, in a file that is currently under review by the IPC;
- The RM considers the new request vexatious and not in good faith as the Applicant has a history with the RM of making vague general complaints and Code of Ethics complaints due to a difference of opinions;
- The Applicant also has a history of contacting the RM's contractors inquiring on projects undertaken, what work was completed, or wasn't completed and timeframes undertaken. The RM fears this will result in harassment of contractors that will leave the RM without service providers or having to pay increased costs due to the potential reputation harm; and
- The RM has been in receipt of numerous repetitious and general inquiries on a daily basis from a specific small group of ratepayers and former Council member.

[33] The Applicant received a copy of the RM's application to disregard. In response to the RM's assertions, the Applicant made a number of arguments to my office which can be summarized as follows:

- The May 5, 2021 access to information request was made because the RM did not give the information requested as per LA FOIP;
- The Applicant is a concerned ratepayer and that is why the Applicant is trying to get information;

- On June 30, 2020, the Applicant was pulled off all of the committees and was told by the RM it was due to ethics issues. The Applicant asked what those ethics issues were but the RM has still not provided them to the Applicant;
- The Applicant denies contacting the RM's contractors and claims it is hearsay, it did not happen and the Applicant did not harass any RM contractor;
- The Applicant asserted the allegations made were not true and that what was happening was defamation of the Applicant's character;
- In regards to the May 5, 2021 access to information request, the Applicant provided the following update in bold:
 - April 28, 2021 Email Complaint, **no reply.**
 - March 22, 2021 Re: west boat launch, **no reply.**
 - April 26, 2021 Email Building Permits 2019, 2020, and 2021, **no reply.**
 - April 21, 2021 Email Grants Detail, **no reply.**
 - April 21, 2021 Email RM Shop Door Motion 2-417, **no reply.**
 - April 20, 2021 Email Inquiry on Motions 20-405 and 20-422, **no reply.**
 - April 16, 2021 Email Policy 2016 October, **no reply.**
 - April 12, 2021 Email RE: Hours Per Week, **no reply.**
 - April 12, 2021 Email RE: Fire Ban, **no reply.**
 - April 12, 2021 Email February 23, 2021 RM meeting (11:15 a.m.), **no reply.**
 - April 12, 2021 Email April 05, 2021 RM Office Closed, **no reply.**
 - April 12, 2021 Email Fwd: Spending, **no reply.**
 - April 12, 2021 RE: Re: Request Documentation, **no reply.**
 - April 12, 2021 RE: RE: Road Allowance North, **no reply.**
 - April 12, 2021 Fwd: FW: RE: Breach In Privacy of Emails, **Received a reply in the mail date stamped May 05, 2021. In that reply is breach of my privacy LAFOIP. I sent to the RM an email May 10, 2021. Attached is a copy of that letter. My understanding is that I need to send to the RM staying a breach as per LAFOIP.**
 - April 12, 2021 Fwd: Request January 29, 2021 File 21-056 Code of ethics Payments, **No reply.**
 - March 31, 2021 RE: RE: RE: Code of Ethics Allegation File 4070, **no reply.**
 - March 22, 2021 Re: west boat launch, **error on my part already mentioned.**
 - March 02, 2021 Case Number 21-128, **not answered completely.**
 - February 26, 2021 RE: Code of Ethics Investigation, **no reply.**

Also requesting a list of the GG2021.02 Policy (RIC) Requests, Inquires, Complaints that I had sent in showing what was done to close the case number on the RM side. **No reply.**

Also request copies of the Committee Meeting Minutes (Finance, Personnel and Works) from 2020 to 2021 present. **The RM website is missing this information. I did ask for in the other request that was up to the date that I requested. From that date to present is what I was referring to.**

Also request the correspondence from the RM meetings. For 2021 they are not on the website for viewing. **Still no information on website.**

[Emphasis in original]

- The Applicant also provided the following regarding other emails the Applicant sent to the RM:
 - Monday, April 12, 2021 10:44 AM, **RM has not answered completely.**
 - Monday, April 12, 2021 10:36 AM, **no reply.**
 - Monday, April 12, 2021 10:31 AM, **no reply.**
 - Monday, April 12, 2021 2:47 PM, **RM has not answered completely.**
 - Monday, April 12, 2021 10:25 AM, **RM has not answered completely.**
 - Monday, April 12, 2021 10:33 AM, **no reply.**
 - Monday, April 12, 2021 12:23 PM, **no reply.**
 - Monday, April 12, 2021 10:53 AM, **no reply.**
 - Monday, April 12, 2021 12:19 PM, **no reply.**
 - Tuesday, April 20, 2021 3:15 PM, **no reply.**
 - Wednesday, April 21, 2021 9:38 AM, **no reply.**
 - Wednesday, April 21, 2021 2:05 PM, **no reply.**
 - Wednesday, April 21, 2021 4:46 PM, **this has been answered.**
 - Monday, April 26, 2021 10:26 AM, **no reply.**
 - Wednesday, April 28, 2021 1:54 PM, **no reply.**
 - Monday, May 10, 2021 5:30 PM, **refer to what I had sent in, the RM copy is blown up it is not what was sent. This has been answered.**

[34] There appears to be a number of emails and email chains floating around and it is likely difficult for all the parties to keep them all straight. It also does not help that some of these emails ask questions and do not request access to records. As I indicated earlier, questions being answered is not captured under LA FOIP. I note some inaccuracies in the Applicant's assertions about the status of the RM's responses to the Applicant's many emails. For example, the Applicant asserts that the RM provided no response to the email titled: April 12, 2021 Fwd: Request January 29, 2021 File 21-056 Code of ethics Payments. However, upon review of the email chain, the RM did respond to the Applicant's January 29, 2021 inquiry on this topic on the same day. The Applicant appears not satisfied with the response and emailed further questions to the RM. It appears the RM did respond but the Applicant wasn't satisfied and emailed again with questions which the RM has not responded to.

[35] Another inconsistency is the email titled: April 12, 2021 RE: Request for Documentation. The Applicant asserted that this email was not responded to by the RM. However, as noted earlier in this Decision, the RM responded to the original request a day after receiving it

on March 10, 2021. The Applicant proceeded to ask multiple times for the same records in follow up emails. The RM responded again on March 22, 2021. However, the Applicant appears unsatisfied with the response from the RM.

[36] In its application to my office, the RM asserted that the requests unreasonably interfere with the operations of the RM because of the size, labour involved and number of staff able to work on the Applicant's request.

[37] Based on a review of the materials provided by the Applicant and the RM, it appears the May 5, 2021 access to information request is large and complex. The time involved for the RM's limited staff would be excessive. In reaching this conclusion, I factor in the May 5, 2021 access to information request combined with all of the individual emails that are captured within this current request. The cumulative effect of all of the emails and access to information requests contained within would consume unreasonable amounts of time for the RM staff and would interfere with their ability to get other RM work completed. The office has a small staff.

[38] In conclusion, I find that the May 5, 2021 access to information request unreasonably interferes with the operations of the RM provided for by subsection 43.1(2)(a) of LA FOIP.

[39] As both parts of the test have been met, I am satisfied that the requirements for subsection 43.1(2)(a) of LA FOIP have been met. Given this finding, it is unnecessary for me to consider subsections 43.1(2)(b) and (c) of LA FOIP.

III DECISION

[40] I grant the RM's application to disregard the Applicant's access to information request of May 5, 2021.

Dated at Regina, in the Province of Saskatchewan, this 9th day of June, 2021.

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