



## INVESTIGATION REPORT 302-2019, 332-2019

### Resort Village of Candle Lake

January 29, 2020

**Summary:** Private individuals corresponded with a councillor of the Resort Village of Candle Lake (the Village) by email. The Councillor forwarded the correspondence to over 80 other individuals. The Village reported the matter to Commissioner. The Commissioner determined that *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) applies to councillors when they are carrying out the mandate or function of the local authority but it does not apply when councillors are conducting political activities. In this case, the Commissioner found that the Councillor exchanged the emails in the course of conducting political activities. As such, the Commissioner found that LA FOIP does not apply in this case.

### I BACKGROUND

- [1] In an email dated September 2, 2019, a councillor of the Resort Village of Candle Lake (the Village) contacted a private individual (Person A). On the same day, the spouse of the private individual (Person B) responded to the Councillor via email. The spouse carbon copied Person A, a neighbour (Person C), the Mayor, and the Village's Administrator on this email. The Councillor and Person B exchanged a couple of more emails that day.
- [2] Then, in an email dated September 5, 2019, the Mayor responded to both Person B and the Councillor and carbon copied Person A and Person C.
- [3] In an email dated September 10, 2019, the Councillor responded to the Mayor and carbon copied Person A, Person B, and Person C.

- [4] Then, the Councillor forwarded the email chain to over 80 other individuals. The names and email addresses of the 80+ individuals were inserted into the “To” field, so any recipient could see the names and email addresses of the other recipients. Within the body of the email, the following notice is given to the reader:

**NOTICE TO READER**

The views and opinions expressed in this email at this time are solely the views and opinions of [name of Councillor]. These views and opinions are not necessarily shared or agreed to by other members of the Resort Village of Candle Lake Council and do not represent the municipal position which can only be expressed in a duly passed resolution or bylaw

**MISSION STATEMENT**

Why are you getting these emails: The core values of accountability and transparency are essential to proper functioning of municipal government which is founded on principles of parliamentary democracy, [sic] The [sic] worst case scenario would be to condone attempts to defeat or deny ratepayers their right: to know all about government decision-making particularly with respect to financial matters. Promoting favouritism, queue jumping, subscribing to claims of entitlement cronyism, not adhering to principle of public tendering, is to promote self-interest at the expense of democratic accountability and the ratepayer. [name of Councillor].

- [5] On September 11, 2019, the Councillor’s email was then forwarded by a recipient to the Village’s Administrator. That same day, the Village proactively reported this matter to my office. It requested that my office review this matter to determine if a breach has occurred or not and to offer advice and direction to the Village in this matter.

- [6] Also on September 11, 2019, the Village also notified Person B of this incident. After being notified, Person B sent an email to the Councillor with a carbon copy to the Mayor, Person A, and Person C. Person B indicated their dissatisfaction with the Councillor for sharing their email exchange and email address with the email group.

**II DISCUSSION OF THE ISSUES**

- 1. Does *The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP)* apply to this matter?**

- [7] LA FOIP applies to records in the possession or under the control of a local authority. In other words, the records are related to the mandate and function of the local authority. In contrast, LA FOIP would not apply to records of elected officials if those are collected or generated in the course of conducting political activities.
- [8] The local authority is the Village pursuant to subsection 2(f)(i) of LA FOIP. The elected official is the Councillor. I need to consider the context in which the email exchange occurred. If it occurred when the Councillor was carrying out the mandate or functions of the local authority, then LA FOIP would apply. However, if the Councillor collected or generated the records in the course of conducting political activities, then LA FOIP would not apply.
- [9] In this case, the Councillor was corresponding with Person A and Person B in the course of conducting a political activity and not the mandate or function of the Village. As such, I find that LA FOIP does not apply to the email exchange between the Councillor and Person A and Person B nor does it apply to the Councillor's action of forwarding that email exchange to over 80 individuals.
- [10] As noted in the Background section of this Report, the Councillor sets out a mission statement that says they send out emails for the purpose of accountability and transparency of municipal government. The accountability and transparency of municipal government should not be at the expense of individual privacy. Even though LA FOIP does not apply to this matter, it would be a best practice for the Councillor to take measures to maintain the privacy of individuals. This will include not disclosing the personal information of individuals, including but not limited to the names and contact information (such as personal email addresses). Removing and/or redacting personal information before sending emails would be a good practice for the Councillor to adopt in order to earn and maintain trust of constituents. This will also include inserting personal email addresses into the "Blind Carbon Copy" (BCC) field instead of the "To" field when sending out emails so that email addresses of private individuals are not disclosed.

[11] And while LA FOIP does not apply to this matter, both the Village and the Councillor should be very well aware that records in a council member's possession may be subject to LA FOIP. For example, in Investigation Report LA-2014-001, my office found that even though a letter was addressed to "Reeve and Council", the record at issue in that case related to the human resources function of the rural municipality. As such, the record was in the possession and under the control of the local authority. Thus, LA FOIP applied to that matter.

[12] My office sent its draft version of this report to the Village, which contained the following three recommendations:

- I recommend that both the Village and its council members participate in access and privacy training. The Ministry of Justice provides online access and privacy training, available at this link: <https://www.saskatchewan.ca/government/training-and-workshops/access-and-privacy-training-course-for-saskatchewan-executive-government>.
- I recommend the Village and its council members review my office's resource *What Councillors should know about LA FOIP*, available here: <https://oipc.sk.ca/assets/what-councillors-should-know-about-lafoip.pdf> and *Best practices for Mayors, Reeves, Councillors, and School Board members in handling records that contain personal information and personal health information*, available here: <https://oipc.sk.ca/assets/best-practices-for-mayors-reeves-councillors-and-school-boards.pdf>.
- Finally, I recommend that the Village and its council develop a policy on how personal information will be managed by both the Village and council. This policy should be made public so that individuals will know how their personal information will be collected, used, disclosed, retained, destroyed, and safeguarded.

[13] In response to the draft report, the Village said the following:

- The Village indicated that its council has attended access and privacy training by my office and that it has records retention policies to manage the information and data that the Village has in its possession. It asserts that its staff can only control the information in their care and possession.
- The Village has in place a communication and social media policy that appoints only two people, the Mayor and the Administrator, to issue reports, information, to the news, media and the public. It asserts that it has not authorized the Councillor to send newsletters such as "From the Desk of [Name of Councillor]".

- The Village's efforts in terms of trying to get the Councillor to comply with its policies include the Village following the instructions and recommendations of the Ministry of Government Relation's Advisory Services, the Saskatchewan Urban Municipalities Association (SUMA) solicitor, and its own solicitor.
- Difficulties that the Village has faced includes there being no procedure to enforce the remedial actions for a councillor who commits code of ethics violations.
- The Village says motions have been made at both SUMA and Saskatchewan Association of Rural Municipalities (SARM) meetings calling on the Government of Saskatchewan to pass legislation to correct "this". However, it says it is difficult for it to continuously monitor a person's actions.

[14] As outlined in my office's Review Report 049-2019, there is conflict between the Village council members. I recommend that the Village and its council members prioritize its citizens' privacy as they work through their conflicts. This includes the Village and its council members continuing to participate in regular access and privacy training and to continue to review my office's resources as described in the bullet points at paragraph [12]. This also includes the Village developing (or amending its current policies) on how personal information is managed by both the Village and council. The Village can also clarify for the public that newsletters by council members are *not* an activity by the Village and such activities may not be covered by LA FOIP.

### **III FINDING**

[15] I find that LA FOIP does not apply to this matter.

### **IV RECOMMENDATIONS**

[16] I recommend that both the Village and its council members continue to participate in access and privacy training and to continue to review my office's resources as described in the bullet points at paragraph [12].

[17] I recommend that the Village and its council develop a policy on how personal information will be managed by both the Village and council. This policy should be made public so

that individuals will know how their personal information will be collected, used, disclosed, retained, destroyed, and safeguarded by the Village, as described at paragraphs [12] and [14].

Dated at Regina, in the Province of Saskatchewan, this 29<sup>th</sup> day of January, 2020.

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