



REVIEW REPORT 011-2020

Rural Municipality of Senlac No. 411

January 6, 2021

Summary: The Applicant submitted an access to information request to the Rural Municipality of Senlac No. 411 (RM). The RM responded by indicating that it had no records responsive to the request. The Applicant appealed to the Commissioner. In the course of the review, the RM provided details of its search efforts. The RM also conducted another search for records and located a record responsive to the Applicant's access request. As a result, the Commissioner found that the RM conducted a reasonable search for records. The Commissioner recommended that the RM redact the personal information of third parties from the record and then release the remainder to the Applicant.

I BACKGROUND

[1] On October 10, 2019, the Rural Municipality of Senlac No. 411 (RM) received the following access to information request:

I am requesting records from [Suffern Lake Regional Park Authority (SLRPA)] and Mr. [name of SLRPA secretary], regarding upgrades/renovations to cabin/lot #s 27, 54, & 56 since 2015.

[2] On November 7, 2019, the RM responded. The Administrator of the RM indicated "...I had no record from the Suffern Lake Regional Park Board Authority and/or Mr. [name of SLRPA secretary] regarding any upgrades/recovations [sic] to cabin/lot #s 27, 54 & 56 from January, 2015 to present". The RM located seven pages of records involving the Applicant's partner and the RM in an email to my office, the Applicant indicated that these seven pages "had nothing to do with [their] request."

[3] On January 16, 2020, the Applicant requested a review by my office.

[4] On January 24, 2020, my office sent emails to both the Applicant and to the RM indicating that it would be undertaking a review.

II RECORDS AT ISSUE

[5] Since the RM responded to the Applicant indicating that no records existed, it is the RM's search efforts that are at issue. As such, no records are at issue in this review.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[6] The RM qualifies as a "local authority" as defined by subsection 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Therefore, I have jurisdiction to review this matter.

2. Did the RM make a reasonable effort to search for records?

a. The Applicant's reason for believing records exist

[7] Section 5 of LA FOIP provides an applicant the right of access to records in the possession or under the control of a local authority. Section 5 of LA FOIP 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.

[8] Section 5 of LA FOIP is clear that access to records must be granted if the records are in the possession or under the control of the local authority subject to any exemptions under Parts III or IV of LA FOIP. However, a local authority cannot provide access to records

that do not exist. Subsection 7(2)(e) of LA FOIP contemplates such situations. This provision provides:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

...

(e) stating that access is refused for the reason that the record does not exist;

[9] Before analyzing the RM's search efforts, I must consider the Applicant's reasons for believing why records exist. Chapter 3 of my office's *Guide to LA FOIP* at page 8, provides that 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 records. In their submission to my office, the Applicant listed the following reasons why they believed records existed in this case:

1. The RM's Administrator told the Applicant that they (the Administrator) receive reports directly from the SLRPA Secretary in regards to renovations and upgrades that occur in cabins at SLRPA.
2. In civil action between the SLRPA and the Applicant, the Regional Manager with the Saskatchewan Assessment Management Agency (SAMA) provided an affidavit. Within the affidavit, the Regional Manager of SAMA indicated that they received information from the RM regarding one of the lots and not from the SLRPA. The Applicant provided my office with a copy of the affidavit.
3. The Applicant had gone to the RM office on September 27, 2019 to inform the RM of plumbing upgrades and their cabin. However, the RM Administrator had informed them that they are to inform the SLRPA secretary of the upgrades, not the RM.
4. The Applicant indicated that there were 15 cabins listed on maintenance reports for SAMA to come visit in early 2017, a new valuation year. The Applicant asserted there should be records from the Park on any of the 15 cabins.

b. The RM's search efforts

[10] When a local authority responds to an access request pursuant to subsection 7(2)(e) of LA FOIP, my office will ask the local authority to describe its search efforts in support of its assertion, which my office will then review. LA FOIP does not require a local authority to

prove with absolute certainty that records do not exist, but it must demonstrate that it has conducted a reasonable search to locate records.

[11] A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records 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 that can be provided to my office to support a local authority's 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.

[12] In the RM's response dated November 7, 2019 to the Applicant, the RM included details of its search efforts. The details were as follows:

On October 23, 2019, the RM's Administrator searched the RM's four-drawer filing cabinet in the storage room. The files are ordered alphabetically. The Administrator retrieved the file for SLRPA. The Administrator looked through the file and found no records from SLRPA and/or Mr. [name of SLRPA secretary] regarding upgrades or renovations to cabin/lot #s 27, 54, and 56 from January 15 to present.

[13] On November 3, 2019, the RM's Administrator searched through a four-drawer filing cabinet that is located in the Administrator's office. The Administrator indicated that they located the following three files regarding Suffern Lake:

- 1) Suffern Lake - LA FOIP 2019 – (green file folder);
- 2) Suffern Lake – Disputes (one pink file folder and one blue file folder); and
- 3) Suffern Lake – Lawsuit 2019 (green file folder).

- [14] The Administrator indicated that searching through the first and third folder yielded no responsive records. However, the Administrator indicated that they located seven pages of records in the second folder. They provided a copy of the seven pages to the Applicant. As noted in the background section of this Report, the seven pages were emails involving the Applicant's partner and the RM. However, based on a review of the seven pages, the subject matter of the emails were not about upgrades or renovations to the three cabins listed in the Applicant's access request.
- [15] On November 16, 2020, my office contacted the RM to determine if the RM would provide additional details or information regarding its search. On November 23, 2020, the RM responded by indicating that it conducted an "electronic search and found no additional information". It indicated that its practice is to check the RM's email account every day. The RM will print emails and file them in the appropriate physical file. It will then delete the email. However, just to be sure, the RM indicated that it searched its email account and used search terms such as "Suffern Lake Regional Park", the name of the SLRPA secretary, "Parks Sask" and "Parks Canada".
- [16] On November 24, 2020, my office followed up with the RM by indicating that the Applicant had provided my office with an affidavit by SAMA. The affidavit indicated that SAMA was provided information regarding Lot 27 from the RM (as described earlier in this Report).
- [17] On December 8, 2020, the RM indicated that it conducted an extensive search by searching through daily record books and all assessment records. As a result, it located a record referenced in the affidavit. This record is a 2016 Maintenance Request List for the year 2017. It features a table and lists several cabins to be reassessed at Suffern Lake and one of the cabins in Lot 27. The RM indicated it did not locate any records to show where the Administrator had obtained the information in order to populate the list since the Administrator had not been to Suffern Lake since 2007. Since the Administrator had not been to Suffern Lake since 2007, the RM indicated that it is likely that the Administrator received such information from the SLRPA Secretary, but was not able to locate any record suggesting that is the case.

[18] While it would have been ideal that the RM located this record within 30 days of receiving the Applicant's access request, I find that the RM has now made reasonable efforts to locate records responsive to the access request.

[19] As mentioned, the record located by the RM contains a table. The first column of the table contains names, addresses and telephone numbers of third party individuals. As this information constitutes the personal information of individuals other than the Applicant, I recommend that the RM redact the first column of the table pursuant to subsection 28(1) of LA FOIP and then release the remainder of the record to the Applicant.

[20] I should note that in my Review Report 091-2019 (issued on April 7, 2020), I recommended that the RM maintain adequate records of all RM business. I said:

It is clear that the members of the SLRPA, which are members of R.M.s, have the responsibility to participate on the SLRPA as a business obligation for the R.M. They are representing the needs and interests of their R.M. as well as those of park residents and surrounding districts. Although the responsibility lies with the Administrator of the SLRPA to create and maintain adequate records, best practice would indicate that, while doing R.M. business, the R.M. should also be keeping adequate records of any discussions or decisions that involves its members or interests. I recommend, going forward, the R.M. maintain adequate records of all R.M. business.

[21] The RM indicated to my office that it would comply with that recommendation. While I acknowledge that the Applicant's access request was received prior to my Review Report 091-2019 was issued, I re-iterate my recommendation. I recommend that the RM maintain adequate records of all RM business.

IV FINDING

[22] I find the RM has now conducted a reasonable search for records responsive to the Applicant's access request.

V RECOMMENDATIONS

[23] I recommend that the RM redact the first column of the table pursuant to subsection 28(1) of LA FOIP and then release the remainder of the record to the Applicant.

[24] I recommend that the RM maintain adequate records of all RM business.

Dated at Regina, in the Province of Saskatchewan, this 6th day of January, 2021.

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