



REVIEW REPORT 019-2018

Quill Lakes Watershed Association No. 14

October 30, 2018

Summary:

An Applicant submitted an access to information request to the Quill Lakes Watershed Association No. 14 (QLWA). The Applicant did not receive a response to their access to information request and submitted a request for review to the Information and Privacy Commissioner (IPC). The IPC found that QLWA was not a government institution pursuant to *The Freedom of Information and Protection of Privacy Act* (FOIP) or a local authority pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). As such, the IPC did not have jurisdiction to undertake a review into this matter. The IPC recommended that legislation be amended to include watershed associations under LA FOIP.

I BACKGROUND

[1] On November 1, 2017, the Applicant submitted a access to information request to the Quill Lakes Watershed Association No. 14 (QLWA):

Pursuant to the Saskatchewan *Freedom of Information and Access to Information Act* [sic] I hereby request access to the following documents related to the QLWA – Common Ground Drainage Diversion Project:

1. Quill Lakes Flood Mitigation Assessment – January 2015
2. Kutawagan Diversion Project Environmental Assessment – September 2015
3. Common Ground Drainage Diversion Design Report - May 2017
4. Common Ground Drainage Operational Plan – June 2017
5. Wildlife Considerations for the Quill Lake Flood Mitigation
6. Project discussions held between QLWA and the Government of Saskatchewan Working Group at meetings held in the Rural Municipality of Mount Hope Council Chambers (April – July 2017)

7. A record of engagement activities and letters of support for the project provided by QLWA
8. Water quality monitoring data collected in 2017.

[2] The Applicant did not receive a response from QLWA and as such contacted my office to request a review. As it was not clear if QLWA was considered a government institution pursuant to *The Freedom of Information and Protection of Privacy Act* (FOIP), this report will consider my jurisdiction.

[3] On January 26, 2018, my office notified both QLWA and the Applicant of the review.

II RECORDS AT ISSUE

[4] First my office must consider if QLWA is a government institution as defined in FOIP or a local authority as defined in *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

III DISCUSSION OF THE ISSUES

1. Is QLWA subject to FOIP?

[5] In order to determine if FOIP applies to QLWA, I must determine if it fits the definition of a “government institution” as defined in FOIP:

2 In this Act:

...

(d) “**government institution**” means, subject to subsection (2):

(i) the office of Executive Council or any department, secretariat or other similar agency of the executive government of Saskatchewan; or

(ii) any prescribed board, commission, Crown corporation or other body, or any prescribed portion of a board, commission, Crown corporation or other body, whose members or directors are appointed, in whole or in part:

(A) by the Lieutenant Governor in Council;

(B) by a member of the Executive Council; or

(C) in the case of:

(I) a board, commission or other body, by a Crown corporation; or

(II) a Crown corporation, by another Crown corporation;

[6] The first consideration is determining how a watershed association is created.

[7] *The Watershed Associations Act* (WAA) provides the following regarding the establishment of a watershed association:

2 In this Act:

(a) “**agency**” means the council of a municipality or the governing body of a corporation or other duly constituted organization, and without limiting the generality of the foregoing includes the board of trustees of an irrigation district, the area authority of a conservation and development area and the board of directors of a water users association;

...

3 Any two or more agencies may apply to the minister for the establishment of a watershed association under this Act by filing with the minister an application...

4(1) Upon receipt of an application under section 3 the minister may recommend to the Lieutenant Governor in Council that an association be established in accordance with the application, and upon such a recommendation the Lieutenant Governor in Council may by order constitute the applicants as a watershed association...

[8] *Order in Council 377/2015 – Quill Lakes Watershed Association Number 14 Membership (Minister Responsible for Saskatchewan Water Security Agency)* provides as follows:

Summary: Orders that the following communities and municipalities constitute the Quill Lakes Watershed Association Number Fourteen (14), comprised of the following agencies with membership on the Board of Directors as follows:

The Rural Municipality of Mount Hope No. 279	1 member
The Rural Municipality of Prairie Rose No. 309	1 member
The Rural Municipality of Usborne No. 310	1 member
The Rural Municipality of Lakeside No. 338	1 member
The Rural Municipality of Leroy No. 339	1 member
Town of Wynyard	1 member

Town of Wadena	1 member
Village of Quill Lakes	1 member
Total	8 members

[9] Thus, QLWA is an association that is established pursuant to and order in council under the WAA.

[10] In order for subsection 2(1)(d)(ii) of FOIP to apply, QLWA would need to be a prescribed body in the regulations. In a review of the FOIP Regulations QLWA is not listed and thus not prescribed. In fact, no watershed association is prescribed.

[11] As subsection 2(1)(d)(ii) of FOIP provides that a body must be prescribed, I find that QLWA does not qualify as a government institution.

2. Is QLWA subject to LA FOIP?

[12] I will also consider if QLWA could qualify as a local authority pursuant to LA FOIP. Local authorities are defined at subsection 2(f) of LA FOIP as follows:

2 In this Act:

...

(f) “**local authority**” means:

...

(xvii) any board, commission or other body that:

(A) receives more than 50% of its annual budget from the Government of Saskatchewan or a government institution; and

(B) is prescribed;

[13] For subsection 2(f)(xvii) of LA FOIP to apply, QLWA would need to receive more than 50% of its annual budget from the Government of Saskatchewan or a government institution and be a prescribed body in *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations). There is no need for my office

to explore how QLWA is funded, as QLWA is not included in the list of bodies prescribed as local authorities in the Appendix of the LA FOIP Regulations. As such, subsection 2(f)(xvii) of LA FOIP would not apply.

[14] I find that QLWA does not qualify as a local authority as defined in LA FOIP.

[15] I find that my office does not have jurisdiction over QLWA as it is not subject to LA FOIP.

[16] The Legislative Assembly, when it passed LA FOIP, clearly intended that all cities, towns and municipalities were to be covered. It also intended all boards or agencies created pursuant to *The Cities Act* or *The Municipalities Act* and appointed by the city or municipality could be prescribed as local authorities. In this instance, we have a body created that is in effect made up of members municipalities. It is reasonable to say that if the members are made up of municipalities and other public bodies, then watershed associations should be covered by LA FOIP.

[17] While QLWA is comprised solely of municipalities, it is my understanding that not all watershed associations are composed in the same manner. However, WSA's website describes watershed associations as "a form of local government acting with the legal authority of *The Watershed Associations Act*." Further, WSA's website provides that watershed associations have the power to levy taxes, raise funds from the member agencies, borrow funds and expropriate land. As the watershed associations are created by order-in-council and have public funding available to them, I am recommending that the government consider legislative amendments that would make watershed associations local authorities pursuant to LA FOIP.

IV FINDINGS

[18] I find that QLWA does not qualify as a government institution as defined in FOIP.

[19] I find that QLWA does not qualify as a local authority as defined in LA FOIP.

[20] I find that my office does not have jurisdiction over QLWA as they are not subject to FOIP or LA FOIP.

V RECOMMENDATIONS

[21] I recommend that QLWA take no further action.

[22] I recommend the Minister responsible for the Saskatchewan Water Security Agency request the Minister of Justice amend the legislation to include watershed associations, including QLWA, as a local authority pursuant to LA FOIP.

[23] I recommend the Minister of Justice consider amending the legislation to include watershed associations, including QLWA, as a local authority pursuant to LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 30th day of October, 2018.

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