



REVIEW REPORT 020-2019, 087-2019

Saskatoon Riversdale Business Improvement District

November 1, 2019

Summary: The Applicant submitted an access to information request to the Saskatoon Riversdale Business Improvement District (SRBID). However, the Applicant did not receive a response from the SRBID so they appealed to the Information and Privacy Commissioner. The Commissioner found that the SRBID did not respond to the Applicant within the legislated timeline. Further, the Commissioner found that the SRBID did not conduct an adequate search for records. The Commissioner recommended that SRBID establish a policy and procedures on how to process access requests pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act*. Further, the Commissioner recommended that the SRBID conduct another search for responsive records.

I BACKGROUND

[1] In a letter dated November 22, 2018, the Applicant submitted the following access request to Saskatoon Riversdale Business Improvement District (SRBID):

Please send to the address above all information retained by your organization relating to me or relating to alleged violations of the Poster Bylaw 7565 in 2017 and 2018.

Also send all manuals, policies, guidelines or procedures relating to posters or maintenance of poster boards. By “posters” I mean any material intended for posting in accordance with the Poster Bylaw by citizens, BID employees or any other person or organization.

[2] The Applicant did not receive a response. Therefore, in a letter dated January 10, 2019, the Applicant requested a review by my office into SRBID’s delayed response.

[3] In emails dated March 21, 2019, my office notified both SRBID and the Applicant that it would be undertaking a review of the time it took to respond to the Applicant's access to information request.

[4] My office attempted to achieve an early resolution to this matter. In a letter dated March 4, 2019, SRBID sent a letter to the Applicant advising them that the records requested do not exist. It said its response is pursuant to subsection 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[5] In a letter dated April 1, 2019, the Applicant requested another review by my office into SRBID's response that no records exist. The Applicant's letter said the following:

1. My understanding is that a government agency that's [sic] reported me to police as many times as the Riversdale BID has should have a record of it. They should also have record of their policy to destroy private property, and with respect to removal of posters at least a quick note that says "Yeah we do that".
2. On July 4th, 2018 the receptionist concealed written correspondence in their possession that stated "The poster guy is at it again" and described my posters written in "Arabic". My understanding is if they don't have that record they should have an explanation as to why they don't.

[6] In emails dated April 11, 2019, my office notified both SRBID and the Applicant that it would be undertaking a review into SRBID's response. My office's email to the Applicant said the following:

We have asked the Saskatoon Riversdale Business Improvement District to prepare a submission explaining how it searched for the requested information and determined that the requested information does not exist. LA FOIP requires that the Saskatoon Riversdale Business Improvement District show that it has made a reasonable effort to identify and locate responsive records. Please refer to our [*IPC Guide to Exemptions*](#) for the search test that we have provided to the Saskatoon Riversdale Business Improvement District, found on pages 81 to 83.

In addition to describing overall search efforts, we have asked the Saskatoon Riversdale Business Improvement District to address the following instances where you allege records should exist:

- Records related to the Saskatoon Riversdale Business Improvement District reporting you to the police.
- Policy or records related to “destroying private property” and/or removal of posters.
- A record from the receptionist from July 4, 2018 where the receptionist stated “The poster guy is at it again” and described your posters as written in “Arabic.”

[7] In an email dated April 11, 2019 to my office, the Applicant indicated that it paraphrased their concerns incorrectly and requested that my office send to the SRBID what they had written. Therefore, in an email dated April 12, 2019, my office told the SRBID that the Applicant’s position was that my office had not properly captured their concerns. Attached to that email was a copy of the Applicant’s letter dated April 1, 2019, which outlined their concerns.

II RECORDS AT ISSUE

[8] At issue is SRBID’s response time to the access to information request as well as SRBID’s efforts to search for records. Therefore, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Does LA FOIP apply?

[9] Subsection 2(f)(v) of LA FOIP provides as follows:

2 In this Act:

...

(f) “local authority” means:

...

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

(A) is appointed pursuant to *The Cities Act*, *The Municipalities Act* or *The Northern Municipalities Act, 2010*; and

(B) is prescribed;

[10] Subsection 3(1) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) provides:

3(1) For the purposes of subclause 2(f)(v) of the Act, the bodies set out in Part I of the Appendix are prescribed as local authorities.

[11] Part I of the Appendix of the LA FOIP Regulations provides as follows:

1. A board, commission or other body established pursuant to *The Cities Act*

[12] Subsection 25(1) of *The Cities Act* provides as follows:

25(1) A council may, by bylaw, establish a business improvement district.

[13] Bylaw No. 7092 of the City of Saskatoon is the bylaw that establishes SRBID as a business improvement district.

[14] I find that SRBID qualifies as a local authority pursuant to subsection 2(f)(v) of LA FOIP. I find that LA FOIP applies and I have jurisdiction to conduct this review.

2. Did SRBID meet the legislated timeline in responding to the Applicant?

[15] The Applicant submitted the access request on November 22, 2018. SRBID responded in a letter dated March 4, 2019. That means it took the SRBID 102 days to respond to the request.

[16] In its letter dated April 11, 2019, the SRBID acknowledged there was delay in responding to the Applicant's access request. It provided the following reasons for the delay:

- this access request is the first formal freedom of information (FOI) access request it has received,
- SRBID did not identify the access request as a FOI request because the access request was not on a form and the application fee was not included, and

- the SRBID was short staffed.

[17] Subsection 7(2) of LA FOIP requires local authorities to respond to access to information requests within 30 days after the request is made. Subsection 7(2) of FOIP provides:

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

[18] Section 12 of LA FOIP provides that a local authority can extend the 30-day period set out in subsection 7(2) of LA FOIP for a period not exceeding 30 days in certain circumstances. In this case, I do not find that the circumstances in which a local authority can extend the 30-day period set out in subsection 7(2) of LA FOIP exists.

[19] I find that the SRBID did not meet its legislated timeline in responding to the Applicant's access request.

[20] I recommend that the SRBID establish policies and procedures on how to process access requests pursuant to LA FOIP. This will provide guidance to SRBID when it receives access requests in the future. If SRBID requires assistance, it could refer to my office's sample access to information policy at this link: <https://oipc.sk.ca/assets/sample-operational-policy-for-municipalities.pdf>. Further, SRBID can contact the Access and Privacy Branch at the Ministry of Justice for assistance.

3. Did the SRBID conduct an adequate search for records?

[21] Section 5 of LA FOIP provides every person a right of access to records in the possession or control of a local authority:

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.

[22] Section 5 of LA FOIP is clear that access to records must be granted if they are in the possession or under the control of the local authority subject to any applicable exemptions under LA FOIP.

[23] LA FOIP does not require a local authority to prove with absolute certainty that records responsive to an access to information request do not exist. However, it must demonstrate that it has conducted a reasonable search to locate them.

[24] A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the 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.

[25] When conducting a review of a local authority's search efforts, details are requested that help my office understand the level of effort made to locate the records. The submission to my office should outline the search strategy, which can include:

- For personal information requests – explain how the individual is involved with the public body (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 organizations 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 public body's control have been searched such as a contractor or information service provider.
 - Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
- Which folders within the records management system were searched and explain how these folders link back to the subject matter requested?
 - For electronic folders – indicate what key terms were used to search if applicable.
- On what dates did each employee search?
- How long did the search take for each employee?
- What were the results of 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 the IPC resource, Using Affidavits in a Review with the IPC available on our website.

[26] In its letter dated April 11, 2019, the SRBID provided a description of the steps it took to locate responsive records. It advised my office of the following:

- The Executive Director, the only employee at the SRBID at the time of processing the access request, searched their email account and the “admin” email account using the Applicant's current and former names. No emails were found.
- The Executive Director searched for any handwritten notes and electronic records that may have been made by SRBID's communications employee but did not locate any records.

[27] The Executive Director did not search through SRBID's paper files or electronic records for the following reasons:

- The Executive Director was aware that they did not create any records about the Applicant,
- SRBID does not maintain any incident reports,
- SRBID does not keep any records or initiate prosecutions related to bylaw infractions, including infractions of the poster bylaw, nor does the SRBID retain any posters (or documents detailing the poster) that may remove or discard.
 - If there is an issue, the Executive Director will contact the police or community support officers. The Executive Director does not make notes about these contacts nor do they follow-up with the police or community support officers.
- The types of records that are maintained by SRBID are board minutes, emails and communications to and from City Hall about major SRBID concerns not already dealt with by bylaw, including such things as injection sites and bikes and their impact on the SRBID.

[28] The Executive Director made the following three points which further addresses the Applicant's concerns outlined in the Applicant's letter dated April 1, 2019:

1. They did contact the police when the Applicant appeared, but that they did not make a written complaint or document the call in any records.
2. The SRBID does not have records on a policy about destroying property and/or the removal of posters. Records that would be responsive to the Applicant's request would be in the possession or control of the City of Saskatoon.
3. The SRBID does not have a receptionist. The Executive Director can only guess that the Applicant was referring to SRBID's communications officer. They checked for any written records or recording of a statement by the communications officer but did not find any records.

[29] During the course of this investigation, my office received evidence that an email was sent by the Executive Director about the Applicant. On August 27, 2019, my office sent an email to the SRBID requesting that the Executive Director conduct a search of emails that may not necessarily contain the Applicant's name, but contains a description of the Applicant and/or photographs of the Applicant.

- [30] SRBID's Executive Director requested that the City of Saskatoon's (the City) Access and Privacy Officer respond to my office's email. On August 28, 2019, the City's Access and Privacy Officer advised that the SRBID's Executive Director's position is that their April 11, 2019 letter addresses my question and that SRBID does not have in its custody or control any records response to the Applicant's access to information request. In response, my office indicated to the City's Access and Privacy Officer that the evidence suggests that the SRBID's Executive Director sent an email on a specific date. My office asked that SRBID conduct a search of emails using that particular date.
- [31] On October 7, 2019, my office received copies of four emails that were sent by SRBID's Executive Director to the Saskatoon Police Service (SPS). The issue of whether these emails should be released is dealt with in my office's Review Report 023-2019, 098-2019.
- [32] These four emails suggest that the SRBID did not conduct an adequate search for records. In fact, it appears that one of these emails contains the Applicant's name. In its April 11, 2019 letter to my office, SRBID indicated it searched email accounts using the Applicant name, but no emails were returned in its search. It is unclear why.
- [33] I find that SRBID did not conduct an adequate search for records.
- [34] I recommend that SRBID conduct another search for responsive records. Then, I recommend that SRBID send a letter to both my office and to the Applicant that includes the details of its search efforts and the result of its search for records within 30 days of receiving the final version of this Report. If additional records are located, SRBID should indicate whether it will be releasing the records to the Applicant or if it would be withholding the records in accordance with a particular exemption in Parts III and/or IV of LA FOIP.

IV FINDINGS

- [35] I find that SRBID qualifies as a local authority pursuant to subsection 2(f)(v) of LA FOIP.

[36] I find that LA FOIP applies and I have jurisdiction to conduct this review.

[37] I find that the SRBID did not meet its legislated timeline in responding to the Applicant.

[38] I find that SRBID did not conduct an adequate search for records.

V RECOMMENDATIONS

[39] I recommend that the SRBID establish a policy and procedures on how to process access requests pursuant to LA FOIP. If SRBID requires assistance, it should contact the Access and Privacy Branch at the Ministry of Justice.

[40] I recommend that SRBID conduct another search for responsive records. Then, I recommend that SRBID send a letter to both my office and to the Applicant that includes the details of its search efforts and the result of its search for records within 30 days of receiving the final version of this report. If additional records are located, SRBID should indicate whether it will be releasing the records to the Applicant or if it would be withholding the records in accordance with a particular exemption in Parts III and/or IV of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 1st day of November, 2019.

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