

**SASKATCHEWAN  
INFORMATION AND PRIVACY COMMISSIONER**

**REVIEW REPORT 025/2015**

**Resort Village of Candle Lake**

**Summary:** The Applicant submitted an access to information request to the Resort Village of Candle Lake (Village). The Village responded to the Applicant denying access because no responsive records existed. Upon review, the Commissioner found that the Village had conducted a reasonable search for responsive records.

**I BACKGROUND**

[1] On December 17, 2014, the Village of Candle Lake (Village) received an access to information request from the Applicant for the following:

Gravel Haul Tender

Provide copy of insurance and bond and copy of “copy of Equipment Lease” for resort contracting to qualify the awarding of contract for gravel haul

[2] In the Village’s January 8, 2015 response to the Applicant, it advised that it was denying access to the record pursuant to subsection 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) because the record did not exist.

[3] The Applicant submitted a request for review to my office on February 9, 2015.

[4] In emails dated February 11, 2015, my office notified both parties of our intention to conduct a review. My office requested the Village provide details of its search efforts.

[5] On February 11, 2015, my office received the Village's submission. No submission was received from the Applicant.

## **II RECORDS AT ISSUE**

[6] The Village has asserted that no responsive records exist within its possession and/or control. Therefore, the focus of this review is on the search efforts conducted by the Village.

## **III DISCUSSION OF THE ISSUES**

[7] The Village is a "local authority" as defined in subsection 2(f)(i) of LA FOIP.

### **1. Did the Village conduct an adequate search?**

[8] Section 5 of LA FOIP provides the right of access as follows:

**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.

[9] Section 5 is clear that access can be granted provided the records are in the possession or under the control of the local authority. LA FOIP does not require a local authority to prove with absolute certainty that records do not exist. It must however, demonstrate that it has made a reasonable effort to identify and locate responsive records.

[10] A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request. The threshold that must be met is one of "reasonableness". In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable.

[11] When providing details of search efforts to my office, generally, the details can include (non-exhaustive):

- Outline the search strategy conducted:
  - 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. For more on this, see the OIPC resource, *A Contractor’s Guide to Access and Privacy in Saskatchewan* available on our website.
- 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 OIPC resource, *Using Affidavits in a Review with the IPC* available on our website.

[12] The above list is a guide. Each case will require different search strategies and details depending on the records requested.

[13] In its submission to our office, the Village indicated that the Village has never had a copy of the insurance, bond or a copy of the equipment lease as requested. The Village advised that its Administrator requested the information from the party awarded the tender and was told that they were leasing equipment and that the lease company held the bond and the party was covered under the leasing company's bond. The Administrator then did a verbal check with the lease company and a bond company to ensure the party awarded the tender was covered under the terms of the leasing company's lease agreement and was assured they were. As such, no written record of that document was ever in the possession or control of the Village. The Village provided my office with a copy of a report to Council signed by the Administrator attesting to the fact that the above contacts and confirmations regarding insurance or bond and equipment leases were conducted. The Village asserted that it has never asked contractors for their agreements with any leasing agent.

[14] With regards to the search conducted, the Village asserted that there were no records to search. The Village pulled the report to Council which took five minutes. The Applicant has a copy of this report.

[15] On March 9, 2015, I contacted the Village for more information regarding its search. The Village Administrator advised that she has been in the position for approximately two years. In the time the Administrator has been in the position, other contracted arrangements have been made and the Village has never questioned the ownership of the equipment used by the contractor (i.e. the types of documents requested such as lease agreements were never requested). In addition, if records like this had been received they would have been filed in the "Gravel Tender 2014" file. This file was searched on January 8, 2015 and only two letters were found on file. Those letters being the tender documents from the bidders. Nothing else was on the file. This was a small contract and did not involve a lot of documents. If the Village had the records they would not be anywhere else other than the "Gravel Tender 2014" file. The Administrator confirmed that the phone calls were made to the bidder and the lease company to confirm there was a bond in place. These phone calls occurred roughly a year ago and are outlined in the report she wrote to Council on August 13, 2014. Further, she signed this report.

[16] The Village has detailed its search efforts and outlined the reasons why the records would not be in the Village's possession or control. The threshold that must be met is one of "reasonableness". Based on what has been provided to my office, I find that the Village has demonstrated that its search for records responsive to the Applicant's access to information request was reasonable and adequate for purposes of LA FOIP.

#### **IV FINDINGS**

[17] I find that the Village has demonstrated that its search for records responsive to the Applicant's access to information request was reasonable and adequate for purposes of LA FOIP.

**V RECOMMENDATIONS**

[18] There are no recommendations to be made at this time as I am satisfied with the efforts made by the Resort Village of Candle Lake in this circumstance.

Dated at Regina, in the Province of Saskatchewan, this 2<sup>nd</sup> day of April, 2015.

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