



REVIEW REPORT 027-2019

Northern Village of Pinehouse

May 1, 2019

Summary:

The Applicant submitted an access to information request to the Northern Village of Pinehouse (the Village). After receiving a response from the Village, the Applicant made a request for review to the Information and Privacy Commissioner (the Commissioner). Upon review, the Commissioner found that the Village did not process the access request in compliance with *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). In addition, the Commissioner found that the Village did not conduct a reasonable or adequate search for records responsive to the access to information request. Finally, the Commissioner found the Village did not meet its duty to assist. The Commissioner recommended the Village develop a policy and procedure for processing access to information requests that includes issuing fee estimates and time extensions and provide a copy to the Commissioner's office and the Ministry of Government Relations within 30 days. Further, the Commissioner recommended that the Village conduct a new search for records and information and provide explanations and details of its search efforts to the Applicant. Finally, he recommended that any records located should be released to the Applicant. This is the 15th Report that the Commissioner has issued regarding the Village.

I BACKGROUND

[1] On December 14, 2018, the Northern Village of Pinehouse (the Village) received an access to information request from the Applicant via Canada Post. Tracking information indicated that the Village received the request on December 14, 2018. The Applicant requested access to:

I want copies of the following documents regarding all remuneration received by Greg Ross from the Village Pinehouse [sic]:

- Payment vouchers for salary and per diems and benefit contributions made by the Village on his behalf in the years 2013-2016.
- Travel expense claims in the years 2013-2016.
- Minutes of Village Council approving payment of all time vouchers and expense claims Greg Ross submitted in the years 2013-2016.
- Minutes of Village Council approving appointment of Greg Ross to salaried positions from 2011 to 2016.
- Copies of job descriptions and job competitions Greg Ross was appointed to in 2011-2016.
- Letters by Greg Ross applying for any position he was appointed to in 2011-2016.
- Minutes of Village Council showing whether or not Greg Ross removed himself from meetings where there was discussion and approval of any salaried positions he was appointed to in 2011-2016.

[2] By letter dated January 11, 2019, the Village responded to the Applicant citing subsection 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). In addition, the Village indicated that it required an extension of 30 days to February 18, 2019, due to the amount of years of information being requested. Further, the letter advised the Applicant that the Village estimated the fee to be \$745.

[3] On January 19, 2019, my office received a request for review from the Applicant. The Applicant requested a review of the \$745 fee estimate. The Applicant also took issue with the Village's 30-day extension. The Applicant asserted that the extension ended on February 14, 2019.

[4] On January 23, 2019, my office contacted the Village regarding the fee estimate. The Village indicated that it did not expect fees from the Applicant as the Applicant had claimed "hardship" or an inability to pay. However, the Village still required the 30-day extension that was noted in the Village's response to the Applicant.

[5] On February 19, 2019, the Applicant received a package of approximately 200 pages of records from the Village in his post office box. There was no cover letter or section 7 response included to explain the records provided or what was missing.

- [6] On February 19, 2019, my office sent an email to the Village. On February 20, 2019, the Village sent an email to my office indicating that my office's emails were arriving blank. Emails were resent to the Village on February 20, 2019.
- [7] On February 28, and March 1, 2019, my office left telephone messages requesting contact. The Village did not return the telephone calls.
- [8] On March 4, 2019, my office sent another email requesting a response be provided to the Applicant by Monday March 4, 2019, or the review would proceed and the lack of section 7 response would be noted in the Review Report. No response was received.
- [9] On March 5, 2019, my office notified the Village and the Applicant of my office's intent to undertake a review. In the notification email to the Village, my office requested a submission explaining why it had not responded to the Applicant within the legislated timelines, why it had not included a proper section 7 response to the Applicant and if any information had been withheld, what exemption(s) in LA FOIP it was relying on. The submission was requested by March 20, 2019.
- [10] On March 22, 2019, my office was copied in five emails from the Village to the Applicant. The first email contained a letter to the Applicant listing the records being released. The remaining emails contained attachments and the subject lines read "minutes 2011", "minutes 2012", "minutes 2013" and "minutes 2014".

II RECORDS AT ISSUE

- [11] The Applicant asserted that records were missing. He claimed he has not receive records from the Village responsive to his request for:
- Council minutes approving payment of all time vouchers and expense claims Greg Ross submitted in the years 2013-2016;
 - Council minutes approving appointment of Greg Ross to salaried positions from 2011 to 2016 (appointment shown but not salary);

- Copies of job descriptions and posted job competitions Greg Ross was appointed to in 2011-2016;
- Letters by Greg Ross applying for any position he was appointed to in 2011-2016; and
- Council minutes showing whether Greg Ross removed himself from meetings where there was discussion and approval of any salaried positions he was appointed to in 2011-2016.

[12] As such, the search efforts conducted by the Village will be addressed in this report.

III DISCUSSION OF THE ISSUES

1. Does the Commissioner have jurisdiction?

[13] The Village is a local authority pursuant to subsection 2(f)(i) of LA FOIP. Thus, I have jurisdiction to conduct this review.

2. Did the Village process the request in compliance with LA FOIP?

[14] As noted above, the Village received the access to information request on Friday, December 14, 2018. The Village claims to have received the access to information request on Tuesday, December 18, 2018. However, nothing was provided by the Village to support this assertion. Following this review, my office shared its preliminary findings and recommendations with the Village. At that point, my office received an email from the Village on April 20, 2019. The Village indicated that it had contacted Canada Post and was requesting a letter for when the access to information request was signed for at the post office. Further, the Village stated that its mail days were Tuesdays, Wednesdays and Fridays. Finally, it asserted that the pickups were not meant to deceive anyone.

[15] In his submission, the Applicant provided my office with a copy of the Canada Post registered mail tracking system receipt which showed that the request was delivered to the Village on December 14, 2018. The following is an image from the Canada Post website:

Canada Post logo: CANADA POST / POSTES CANADA

Navigation: Personal Business My Account Tools

Delivery progress

This is the most up-to-date information available.

Date	Time	Location ?	Description	Retail Location	Signatory Name
2018/12/14	14:50	PINEHOUSE LAKE, SK	Delivered		
2018/12/14	14:50		Signature available through Customer Service		
2018/12/13	09:37	PINEHOUSE LAKE, SK	Notice card left indicating where and when to pick up item ?		
2018/12/13	00:01	Canada	Delivery may be delayed due to labour disruption		
2018/12/13	09:34	PINEHOUSE LAKE, SK	Item accepted at the Post Office		

[16] Based on the request’s arrival on Friday December 14, 2018, the due date for a response was Sunday January 13, 2019. However, consistent with section 24 of *The Interpretation Act, 1995*, where a due date falls on a weekend, the time is extended to the next day the office is open. In this case, the due date would have been Monday January 14, 2019. This due date becomes important when calculating 30-day extensions pursuant to section 12, which I will address shortly.

[17] Similar disputes around when the Village received access to information requests were at issue in previous Review Reports including most recently 204-2018 and 040-2019. As indicated in those reports, the 30 days does not begin when the Village picks up the access to information request from the post office. It begins when the request arrives at the Village

post office. The Village will have to calculate its 30-day deadline taking this into account. In Review Reports 204-2018 and 040-2019, I recommended the following:

I recommend the Village develop a policy and procedure for processing access to information requests that includes:

- how access to information requests are to be handled when they arrive at the Village post office (i.e. routing);
- that requests be date stamped by the Village on the date of arrival; and
- that processing begins immediately.

[18] This recommendation does not appear to have been complied with. Therefore, this recommendation is made again to the Village.

[19] Moving on to the fee estimate and time extension, the Village first responded to the Applicant by letter dated January 11, 2019. There are a few issues with the response.

[20] First, the response indicated that a fee of \$745 was required and that the Village needed a 30-day extension to February 18, 2019. The letter stated “[the Mayor] has considered the Access to Information Request, received December 18th, 2018 (the “Request”) and responds pursuant to section 7(2)(e) that an extension of 30 days to February 18th, 2018 is requested...”.

[21] It is not clear why it quoted subsection 7(2)(e) of LA FOIP. The Village should refer to subsection 9(3) of LA FOIP when issuing a fee estimate. For an extension, the Village should have quoted subsection 12(1)(a)(i) of LA FOIP because it said the reason for the extension was “the amount of years of information being requested”. Subsection 12(1)(a)(i) of LA FOIP provides:

12(1) The head of a local authority may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:

(a) where:

- (i) the application is for access to a large number of records or necessitates a search through a large number of records;

...

and completing the work within the original period would unreasonably interfere with the operations of the local authority;

[22] Second, the Village issued a fee estimate and an extension at the same time. The extension was premature. I will explain why. When it comes to processing an access to information request, the statutory 30-day timeline for responding to an Applicant is stopped where a fee estimate is issued pursuant to subsection 9(3) of LA FOIP. This provision provides as follows:

9(3) Where an estimate is provided pursuant to subsection (2), the time within which the head is required to give written notice to the applicant pursuant to subsection 7(2) is suspended until the applicant notifies the head that the applicant wishes to proceed with the application.

[emphasis added]

[23] There was no need for a time extension because the clock had stopped when the fee estimate was issued. Subsection 9(4) of LA FOIP provides a discretionary authority for the head to require a deposit prior to commencing a search for records. Subsection 9(4) of LA FOIP provides:

9(4) Where an estimate is provided pursuant to subsection (2), the head may require the applicant to pay a deposit of an amount that does not exceed one-half of the estimated amount before a search is commenced for the records for which access is sought.

[24] If the Applicant pays the deposit, it is a signal to the local authority that the Applicant wishes to proceed with the request. At this point, the clock continues from where it left off (i.e. the date the fee estimate was issued). It is at this point that the Village could have sent a notice of a time extension pursuant to subsection 12(1)(a)(i) of LA FOIP. The 30-day extension due date could then be properly calculated. In this case, upon receiving the fee estimate, the Applicant took issue with it and the Village dropped it. At that point, it could have issued the extension letter.

[25] Third, the Village waited too long to issue the fee estimate. My office and the Access and Privacy Branch of the Ministry of Justice recommend that local authorities take no more than three to 10 days to issue a fee estimate (Review Report 261-2016 & 284-2016, *Help with FOIP/Access Request Checklist*, publications.gov.sk.ca). This allows time to process the request once the deposit is made and notify third parties if necessary. In this case, the Village waited until the initial 30 days was almost reached before sending a fee estimate. If the Applicant paid a deposit immediately, the Village would only have had three days left to process the request. The Village should be aware that time extensions are not always authorized under LA FOIP so it is bad practice to wait this long.

[26] For future requests where the Village intends to issue a fee estimate and/or extension, I recommend the Village have a policy and process in place to guide it. There are a number of resources available to assist the Village including:

- *Help with FOIP, Access Request Checklist*, Access and Privacy Branch, Ministry of Justice, publications.sk.ca;
- *FOIP/LA FOIP Flow Chart*, Access and Privacy Branch, Ministry of Justice, publications.sk.ca;
- *Model Letters (LA FOIP)*, Access and Privacy Branch, Ministry of Justice, publications.sk.ca;
- *Steps to Charging Fees*, Saskatchewan Information and Privacy Commissioner's Office (SK IPC), oipc.sk.ca/resources/access;
- *Fee Estimate – Quick Calculation Guide*, SK IPC, oipc.sk.ca/resources/access;
- *Best Practices for Responding to Access Requests*, SK IPC, oipc.sk.ca/resources/access; and
- *IPC Guide to Exemptions*, SK IPC, oipc.sk.ca/resources/access.

[27] Fourth, when the Village finally provided records to the Applicant, it did so without a section 7 response attached. There are some issues with this:

1. This is not compliant with section 7 of LA FOIP; and

2. Without one, an applicant has no idea what the records are, if anything has been withheld or is missing. This is not compliant with the duty to assist at section 5.1 of LA FOIP.

[28] In conclusion, I find that the Village did not process the request in compliance with LA FOIP.

[29] It should be noted that after receiving my office's preliminary analysis on this matter, the Village sent the Applicant a letter on April 24, 2019. The letter was dated April 20, 2019, and restated the Applicant's access to information request. After some of the line items, the Village provided some information about the records. The letter stated:

Thank you for your access to information request received in this office on December 18th, requesting access to

I want copies of the following documents regarding all remuneration received by Greg Ross from the village Pinehouse:

Payment vouchers for salary and per diems and benefit contributions made by the village on his behalf in the years 2013-2016. **(Previously Provided)**

Travel expense claims in the years 2013-2016. **(Previously Provided)**

Minutes of village council approving payments of all-time vouchers and expense claims Greg Ross submitted in the years 2013-2016.

Minutes of Village Council approving Greg Ross to salaried positions from 2011-2016.

Minutes of Village Council showing Greg Ross removing himself from meetings where there was discussion and approval of any salaried positions, he was appointed to in 2011-2016. **(We previously provided all minutes regarding Greg Ross from 2011-2016)**

Copies of job descriptions and posted job competitions Greg Ross was appointed to in 2011-2016. **(Does not exist)**

We apologize for the delay of this letter. We have included the office of privacy commissioner in this correspondence.

All of which is respectfully submitted by Mike Natomagan, Mayor of the Northern Village of Pinehouse.

[emphasis added]

[30] I applaud the Village for its effort to provide a section 7 response where it previously had not when it released several records to the Applicant. However, the response is still not compliant with section 7 of LA FOIP for the same reasons noted earlier in this report. It is also missing some of the elements required under section 7 (i.e. it should now cite subsection 7(2)(e) because it is indicating some records “do not exist” and it should cite subsection 7(3). In addition, the response is well past the 30-day deadline. I encourage the Village to continue to iron out its process and create template letters that contain all the elements required by section 7. I have previously pointed the Village to *Model Letters (LA FOIP)* at the Access and Privacy Branch, Ministry of Justice. As noted above, this can be found at publications.sk.ca.

2. Did the Village meet its duty to assist?

[31] Subsection 5.1(1) of LA FOIP provides:

5.1(1) Subject to this Act and the regulations, a local authority shall respond to a written request for access openly, accurately and completely.

[32] This means that local authorities should make reasonable effort to not only identify and seek out records responsive to an applicant’s access to information request, but to explain the steps in the process and seek any necessary clarification on the nature or scope of the request within the legislated timeframe.

[33] *Reasonable effort* is what a fair and rational person would expect to be done or would find acceptable and helpful in the circumstances (Office of the Nova Scotia Information and Privacy Commissioner (NS IPC), Resource, *What is the Duty to Assist*, at p. 1. Similar definition cited in SK Review Report F-2006-003 at [55], SK Resource, *Understanding the Duty to Assist, A Guide for Public Bodies*, January 2018).

[34] *Open* means to be honest, forthcoming and transparent. Where a decision is made to not provide an applicant with all or part of a record, a local authority should provide reasons

for the refusal in an upfront and informative manner. Being open would also include explaining to an applicant other things such as: how and why a decision was made, how responsive records were searched for, any additional information necessary to explain something found in the record that is believed to be confusing; how a fee is calculated; and creating a record when appropriate (NS IPC Resource, *What is the Duty to Assist*, at p. 1, SK Resource, *Understanding the Duty to Assist, A Guide for Public Bodies*, January 2018).

[35] *Accurate* means careful; precise; lacking errors (Review Report F-2006-003 at [49]). Further, it means the local authority must provide the applicant with sufficient and correct information about the access process and how decisions are made (NS IPC Resource, *What is the Duty to Assist*, at p. 1, SK Resource, *Understanding the Duty to Assist, A Guide for Public Bodies*, January 2018).

[36] *Complete* means having all its parts; entire; finished; including every item or element; without omissions or deficiencies; not lacking in any element or particular (Review Report F-2006-003 at [49]). Further, it means the information from a local authority must be comprehensive and not leave any gaps in its response to an applicant's access to information request. A local authority should provide all the necessary details to enable an applicant to understand how a decision was reached (NS IPC Resource, *What is the Duty to Assist*, at p. 2). This would include explaining what, if any, exemptions have been applied to a record, the reason it was applied and what factors were relied upon in exercising discretion to withhold all or part of a record (SK Resource, *Understanding the Duty to Assist, A Guide for Public Bodies*, January 2018).

[37] In this case, the Village did not respond to the Applicant openly, accurately or completely when it did not provide a proper section 7 response with the records. As a result, the Applicant was unclear what was provided, what was withheld and what was missing. After going through the package, the Applicant identified records and information that appeared to be missing.

[38] If records requested do not exist, the Village should indicate that, cite subsection 7(2)(e) of LA FOIP and list what does not exist in its response. Providing explanations and efforts

that were undertaken to locate responsive records can sometimes satisfy applicants. It can also build trust with applicants that nothing is being hidden. It is about being transparent and open to the public.

[39] In conclusion, I find that the Village has not met its duty to assist pursuant to subsection 5.1(1) of LA FOIP.

3. Did the Village conduct a reasonable search?

[40] Section 5 of LA FOIP provides every applicant the 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.

[41] Section 5 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.

[42] 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.

[43] 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.

[44] 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 conducted which can include:

- 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 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 local authority'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.

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

[46] My office has no information about how the Village conducted its search. According to the Applicant, the following records or information were missing:

- Council minutes approving payment of all time vouchers and expense claims Greg Ross submitted in the years 2013-2016;
- Council minutes approving appointment of Greg Ross to salaried positions from 2011 to 2016 (appointment shown but not salary);
- Copies of job descriptions and posted job competitions Greg Ross was appointed to in 2011-2016;
- Letters by Greg Ross applying for any position he was appointed to in 2011-2016; and
- Council minutes showing whether Greg Ross removed himself from meetings where there was discussion and approval of any salaried positions he was appointed to in 2011-2016.

[47] If the Village had explained why some records or information did not exist, the Applicant may have been satisfied. For example, one of the Council minutes provided to the Applicant indicates that Greg Ross was appointed to a position. If he was appointed, no job posting was probably necessary. However, the Village has not provided an explanation so the Applicant is left with more questions than answers.

[48] In conclusion, as the Village did not provide details of its search efforts as requested by my office, I find that the Village has not demonstrated that its search for records was reasonable and adequate for purposes of LA FOIP.

[49] I recommend the Village conduct a reasonable and adequate search for the remaining records and information requested and provide explanations and details of its search efforts to the Applicant. Any records located should be provided to the Applicant.

[50] There were a number of non-compliance issues highlighted in this Review Report. This is now the 15th Review Report issued by my office involving the Village between 2013 and 2019.¹ Fourteen of these reports deal with section 7 responses not being provided, delays in providing it or responses being inadequate.² In addition, the Village did not cooperate with requests by my office in 12 of these cases.³ In one report, former Commissioner Gary Dickson, Q.C. recommended that the Minister of Justice and Attorney General consider prosecution pursuant to subsection 56(3) of LA FOIP because the Village did not comply with a lawful requirement of the Commissioner (LA-2013-004). The prosecution did not proceed because the Village did what the former Commissioner requested after the issuing of the public report. In Review Report 204-2018, I recommended the Minister of Government Relations direct an inspection or inquiry under sections 396 and 397 of *The Municipalities Act* (sections 417 and 418 of *The Northern Municipalities Act*) due to the non-compliance with my office and LA FOIP. The Minister ordered an inspection of the Village on December 7, 2018, and expanded that to an inquiry by Mr. Neil Robertson, Q.C. on April 2, 2019.

IV FINDINGS

[51] I find that the Village did not process the access to information request in compliance with LA FOIP.

[52] I find that the Village has not met its duty to assist pursuant to subsection 5.1(1) of LA FOIP.

¹ Saskatchewan OIPC Review Reports (SK OIPC) LA-2013-004, 141-2015, 036-2016, 037-2016, 039-2016, 040-2016, 056-2016, 098-2016, 106-2016, 110-2016, 171-2016, 104-2018, 204-2018, 040-2019 and 027-2019.

² SK OIPC Review Reports LA-2013-004, 036-2016, 037-2016, 039-2016, 040-2016, 056-2016, 098-2016, 106-2016, 110-2016, 171-2016, 104-2018, 204-2018, 040-2019 and 027-2019. Review Report 141-2015 dealt with search issues.

³ SK OIPC LA-2013-004, 036-2016, 037-2016, 040-2016, 056-2016, 098-2016, 106-2016, 110-2016, 104-2018, 204-2018, 040-2019 and 027-2019.

[53] I find that the Village has not demonstrated that its search for records was reasonable and adequate for purposes of LA FOIP.

V RECOMMENDATIONS

[54] I recommend the Village develop a policy and procedure for processing access to information requests that includes:

- how access to information requests are to be handled when they arrive at the Village post office (i.e. routing);
- that requests be date stamped by the Village on the date of arrival; and
- that processing begins immediately.

[55] I recommend the above policy and procedure include a section on issuing fee estimates and time extensions.

[56] I recommend the Village provide a copy of this policy and procedure to the Ministry of Government Relations and my office within 30 days of receiving this Review Report.

[57] I recommend the Village conduct a reasonable and adequate search for the remaining records and information requested and provide explanations and details of its search efforts to the Applicant. Any records located should be provided to the Applicant.

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

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