



REVIEW REPORT 035-2018

Rural Municipality of Manitou Lake #442

August 28, 2018

Summary:

The Rural Municipality of Manitou Lake #442 (the RM) received an access to information request. The Applicant believed he did not receive all the records responsive to the access request. The Information and Privacy Commissioner (IPC) found that the RM has not made a reasonable effort to search for records. He made a number of recommendations including that the council member for Division 2 of the RM provide the Chief Administrator Officer (CAO) with the copy of emails that relate to RM business within 10 days of this report. He recommended that the CAO review the emails and apply exemptions pursuant to Parts III and IV of *The Local Authority Freedom of Information and Protection of Privacy Act* and then provide the Applicant with a copy of the records within 30 days of the issuance of this report.

I BACKGROUND

- [1] On December 8, 2017, the Rural Municipality of Manitou Lake #442 (the RM) received the following access to information request:

All incoming and outgoing emails from or to them (div2.rm442@gmail.com) for the previous 18 months.

- [2] In a letter dated December 19, 2017, the RM responded as follows:

I have provided a copy of ingoing and outgoing emails from div2.rm442@sasktel.net, that the RM of Manitou Lake #442 Privacy Coordinator for file #2017-3, could access. Being that you are an RM of Manitou Lake #442 Council member you do have access to all records under RM control and possession. Personal information has been redacted as per the [sic] *Local Authority Freedom of Information and Protection of Privacy Act*.

If you are not satisfied with the results of this response to your request you may ask the Office of the Information Privacy Commission [sic] to review your file. I have enclosed a request for review form with this letter.

[3] In another letter, dated February 5, 2018, the RM wrote to the Reeve again:

In respects to your request for information, the Head has been unable to retrieve any further information for you.

If you are not satisfied with this it is your right to request a review to be completed by the Privacy Commissioner of Saskatchewan. I have enclosed a copy of the form if you should need it.

[4] On February 20, 2018, my office received a request for review from the Applicant. He asserted that he had not received all the emails.

[5] On February 23, 2018, my office notified both the Applicant and the RM that it would be undertaking a review.

II RECORDS AT ISSUE

[6] At issue is the RM's search efforts. Therefore, there are no records at issue in this review.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to review this matter?

[7] The RM is 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. Who is the head of the RM?

[8] The head of a local authority is responsible for making decisions on whether information is withheld or disclosed when it is processing an access request. For example, exemptions in Part III of LA FOIP begins with the phrase “A head shall refuse...” or “A head may refuse...”.

[9] Subsection 2(e) of LA FOIP defines “head” as follows:

2 In this Act:

...
(e) “head” means:

(i) in the case of a municipality, the mayor, reeve or chairperson of the local advisory committee, as the case may be;

[10] In this case, the Reeve is the head of the RM but he is also the Applicant. The Reeve, as a citizen and private individual, still has a right to access records in the possession or under the control of the RM pursuant to section 5 of LA FOIP. This is similar to the finding in my office’s report LA-2012-003 where the mayor of a village is the head for purposes of LA FOIP and the applicant for the purpose of that particular review. The head of a municipality is not prohibited from being an applicant in a review.

[11] Section 50 of LA FOIP provides that the head may delegate its power and duties to one or more officers or employees. It provides:

50(1) A head may delegate to one or more officers or employees of the local authority a power granted to the head or a duty vested in the head.

(2) A delegation pursuant to subsection (1):

(a) is to be in writing; and

(b) may contain any limitations, restrictions, conditions or requirements that the head considers necessary.

[12] The RM provided my office with a copy of a written delegation, dated December 8, 2017, that provided:

I [name of Reeve], delegate the LA FOIP Coordinator duties to [name of Assistant Administrator] for the request of information 2017-03.

I will keep the LA FOIP Coordinator duties for all other requests that may come in.

[13] As such, I find that the head of the RM is the Reeve but the person with delegated authority for processing this particular access request was the RM's Assistant Administrator.

[14] It should be noted that in the course of my office's review, the RM's Assistant Administrator went on leave. Therefore, the Reeve delegated the head's duties to the Chief Administrator Officer. This was recorded in a written delegated dated August 17, 2018.

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

[15] When an Applicant believes there are more records than what was provided, the focus of my office's review is the local authority's search efforts. Specifically, whether or not the local authority conducted a reasonable search.

[16] 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 access 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 access request and related circumstances.

[17] In this case, the Applicant requested all incoming and outgoing emails from the email account of the councillor for Division 2 of the RM for the last 18 months. Therefore, a reasonable place to search is the councillor's email account.

[18] In the RM's submission, the RM's Assistant Administrator indicates she logged into the email account for Division 5 and downloaded all the emails sent to the Division 2 councillor and any emails that included the Division 2 councillor's name on December 11, 2017. Then, on the same day, she also logged into the email account for Division 2's councillor and downloaded all email headings and printed them. She did not print the emails themselves.

[19] To obtain a copy of the emails, the RM's Assistant Administrator sent a text message on to the councillor for Division 2 on December 11, 2017. In the submission, the RM's Assistant Administrator describes the resistance she experienced trying to obtain copies of the emails from the councillor for Division 2. Included in the submission are the following:

- Copy of text message exchanges on December 11, 2017 and December 12, 2017 between the RM's Assistant Administrator and the councillor.
 - The RM's Assistant Administrator requests a copy of the emails and the iPad the RM provided to the councillor. The councillor requests the "paperwork" for the LA FOIP request.
- Email dated December 15, 2017 from the Councillor the RM's Assistant Administrator. The Councillor provides many reasons why he will not provide the emails to the RM's Assistant Administrator, including how the emails contain "private information".
- Letter dated December 15, 2017 from the RM's Assistant Administrator to the Councillor explaining emails are required and it is the "head's" responsibility to redact "private" information from the emails.
- Email dated December 17, 2017 from the Councillor to the RM recounting a conversation he had with the RCMP regarding the iPad and the "intellectual property" contained on the iPad. The Councillor wants to know who owns the intellectual property contained on the iPad. Further, he asserts that the iPad was remotely accessed on December 11, 2017. He offers to return the iPad in exchange for the data downloaded when it was accessed remotely.
- Letter dated December 18, 2017 from the RM's Assistant Administrator to the Councillor. This letter contains similar contents contained in the letter dated December 15, 2017 but also encloses the RM's email, Internet, social media, and confidentiality policies.

[20] In the submission, the RM's Assistant Administrator indicated that on December 15, 2017 she tried to log into the email account for Division 2 but the password had been changed.

[21] There appears to be mistrust between the council member and the RM's Assistant Administrator that prevented the RM from completing a reasonable search for records to process this particular access request. As such, I find that the RM has not made a reasonable effort to search for records.

[22] I recommend that the council member for Division 2 of the RM provide the RM's Chief Administrator Officer with a copy of the emails that relate to RM business within 10 days of the issuance of the final version of this report. As mentioned in my previous reports 075-2017 and 076-2017, and 156-2017 and 264-2017, I expect that a council member, including the Reeve, could ask for almost any record in the possession or control of the RM that relate to RM business except possibly those containing the personal information of others. This is so that council members can carry out their duties.

[23] Once the council member provides the emails that relate to RM business to the Chief Administrator Officer, I recommend that she review the emails and apply exemptions pursuant to Part III and IV of LA FOIP and provide the Applicant with a copy of the records within 30 days of the issuance of the final version of this report.

[24] I recommend that the RM do the following:

- The RM require council members and employees to receive annual training on their duties under LA FOIP. It may accomplish this by contacting the Access and Privacy Branch at the Ministry of Justice for assistance. Council members and employees must be able to work together in order to meet the RM's obligations under LA FOIP.
- The RM create records management policies where councillors must promptly save emails that relate to RM business into a central records management system. Records, such as emails, related to RM business should be accessible to employees of the local authority to complete their duties and not locked away in an email account.
- If it has not already done so, I recommend that the RM undertake a records management project where emails currently stored in the email accounts of council members are sorted through so that the emails that relate to RM business is stored into a central records management system.
- The RM implement its own email system and require council members and RM employees to use only that email system to conduct RM business. It should also require its council members and employees to avoid using free email services such as gmail because the RM lacks control over how the emails will be managed, safeguarded, stored, and destroyed.
- The RM implement an email policy that provides as follows:

- The Reeve, councillors, and employees are required to use the RM's email system for RM business only.
- The Reeve, councillors, and employees should not be using the RM's email system for activities not related to the RM, including any political activities.
- The Reeve, councillors, and employees must promptly save emails into a central records management system.
- The Reeve, councillors, and employees must use reasonable safeguards to protect their email accounts including requiring a user name and a strong password to access the email account.
- The Reeve, councillors, and employees must use reasonable safeguards to protect any mobile device that has access to email accounts including requiring a strong password and encryption.
- If the Reeve, councillors, and employees must access RM email accounts through mobile devices, they should only do so through RM-issued mobile devices.
- The Reeve, councillors, and employees should not leave mobile devices unattended and should prevent unauthorized access to the mobile device.
- The Reeve, councillors, and employees who use a mobile device to access emails must still promptly save emails into a central records management system.

IV FINDING

[25] I find that the RM has not made a reasonable effort to search for records.

V RECOMMENDATIONS

[26] I recommend that the council member for Division 2 of the RM, provide the RM's Chief Administrator Officer with a copy of the emails that relate to RM business within 10 days of the issuance of the final version of this report.

[27] I recommend that the RM's Chief Administrator Officer review the emails and apply exemptions pursuant to Parts III and IV of LA FOIP and provide the Applicant with a copy of the records within 30 days of the issuance of the final version of this report.

[28] I recommend that the RM follow the recommendations listed at paragraph [24].

Dated at Regina, in the Province of Saskatchewan, this 28th day of August, 2018.

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