



REVIEW REPORT 039-2016

Northern Village of Pinehouse

June 3, 2016

Summary:

The Northern Village of Pinehouse provided a response to the Applicant's access to information request indicating that responsive records did not exist. The Applicant requested a review by the Commissioner on the basis that records did not exist and the Village did not respond within the legislated timelines. The Commissioner requested that the Village provide a submission regarding these matters for the purpose of the review. It did not. The Commissioner found that the Village did not perform a reasonable search for records and did not respond within legislated timelines.

I BACKGROUND

[1] The Applicant sent an access to information request to the Northern Village of Pinehouse dated December 28, 2016. She requested the following:

As Pinehouse Business North is a wholly owned municipal corporation, and as the Village is the sole shareholder, the Village has the authority to dispense with audited financial statements in any fiscal year. This is the reason that the Village administration has indicated as to why PBN financial statements do not exist for 2009-2011. I am requesting copies of Village Council minutes and PBN Board minutes in which motions were passed authorizing the PBN board to dispense with financial statements (audited or unaudited) for 2009, 2010 and 2011.

[2] On March 10, 2016, the Applicant requested a review by my office. She indicated she had not received a response from the Village in 63 days.

- [3] My office contacted the Village on March 11, 2016 and April 5, 2016 requesting that it respond to the Applicant's access request in the manner described in section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [4] On March 21, 2016, the Village responded to the Applicant indicating that it had received her request on February 27, 2016 and indicated that responsive records did not exist.
- [5] On April 18, 2016, the Applicant requested that my office review the Village's claim that responsive records did not exist and the delay in its response. On April 25, 2016, my office provided notification to both the Village and the Applicant of our intention to undertake a review. We requested a submission about the issues from the Village by May 9, 2016.

II RECORDS AT ISSUE

- [6] The Village has communicated to the Applicant that records responsive to her request do not exist.

III DISCUSSION OF THE ISSUES

1. Did the Village conduct a reasonable search for records?

- [7] 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.

- [8] 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.

- [9] 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.
- [10] The level of detail that can be provided to my office is outlined in my office’s resource, *IPC Guide to Exemptions*. Each access request requires different search strategies depending on the nature of the records and the way an organization manages them. This resource is available for those responsible for the administration of LA FOIP.
- [11] I note that the Applicant’s request was for minutes of the Village council. Subsection 117(1)(d) of *The Municipalities Act* gives any person the right to obtain copies of council minutes. In this case, the Village could have addressed whether or not the topics addressed in the Applicant’s request were discussed by council and captured in the minutes.
- [12] The Village did not provide our office with any information about its search. As such, I must conclude that the Village has not performed a reasonable search for records.

2. Did the Village respond to the Applicant within the legislated timelines?

- [13] 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) provides:

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

- [14] Subsection 12(1) of LA FOIP enables local authorities to extend the 30 days prescribed in subsection 7(2) for a reasonable period not exceeding 30 days. However, pursuant to subsection 12(2) of LA FOIP, the local authority must provide notification to the Applicant that it will be relying on subsection 12(1) within the first 30 day period. Section 12 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; or

(ii) there is a large number of requests;

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

(b) where consultations that are necessary to comply with the application cannot reasonably be completed within the original period; or

(c) where a third party notice is required to be given pursuant to subsection 33(1).

(2) A head who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within 30 days after the application is made.

(3) Within the period of extension, the head shall give written notice to the applicant in accordance with section 7.

[15] The Applicant's request for review indicated that she made her access request to the Village on December 28, 2015. The copy of the access to information request that she provided to my office reflects this date.

[16] However, the Village's response to the Applicant indicates that it received her request on February 17, 2016. It did not provide my office with a submission on this issue

[17] Based on the information provided, it took the Village 84 days to respond to this access to information request. The Village's response time to the access request exceeded the legislated timelines.

IV FINDINGS

[18] I find that the Village has not performed a reasonable search for records.

[19] I find that the Village did not respond to the access to information request within the legislated timelines.

V RECOMMENDATIONS

[20] I recommend that the Village perform a reasonable search for records. If no records are found, I recommend it provide a detailed explanation of the search to the Applicant.

[21] I recommend that the Village examine its process for responding to access to information requests and look for ways to improve response times.

Dated at Regina, in the Province of Saskatchewan, this 3rd day of June, 2016.

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