



REVIEW REPORT 049-2019

Resort Village of Candle Lake

January 29, 2020

Summary:

The Applicant, who is a council member, submitted a lengthy access request to the Resort Village of Candle Lake (the Village). The Village responded but the Applicant was not satisfied with the Village's response. The Applicant appealed to Commissioner. In the course of the review, the Commissioner determined that some of the records had already been provided to the Applicant so the issue of determining whether exemptions apply to such records was moot. The Commissioner found that the Village properly applied subsection 21(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to some of the records. The Commissioner found that the Village should not have relied on subsection 6(3) of LA FOIP nor did it meet its duty to assist.

I BACKGROUND

Conflict between council members

- [1] The council of the Resort Village of Candle Lake (the Village) held a special council meeting on May 12, 2018. In that meeting, the Mayor put forward motion 175/2018 to suspend a councillor from council effective immediately until August 15, 2018, and that this particular councillor would be suspended from all council activities from May 12, 2018 to August 15, 2018. The motion was carried. In that same meeting, a council member put forward motion 176/2018 to commence court proceedings to have the suspended councillor removed as a member of council. That motion was also carried.
- [2] Then, during the Village's council meeting on July 13, 2018, the suspended councillor was noted as "absent" in the Village's meeting minutes. However, the meeting minutes

indicated that the suspended councillor was present. The Mayor gave the direction that the suspended councillor was not to be recognized as a participating member of council. The meeting minutes provide as follows:

Note: Councilor [sic] [name of suspended council member] was present at the council meeting table. Having been suspended pursuant to Council Motion 175/2018, Councilor [sic] [name of suspended council member] was requested by the Mayor to leave and refused to comply with the request. The Mayor then directed that Councilor [name of suspended council member] is not to be recognized as a participating member of Council as it relates to this meeting but rather an observing member of the gallery.

- [3] In that meeting, the Mayor put forward two motions regarding the suspended councillor. The first motion, motion 314/2018, extended the suspension for another 60 days from August 15, 2018 to October 15, 2018, without any remuneration. The second motion, motion 315/2018, was to restrict the suspended councillor's ability to receive any copies of Village documents. The suspended councillor would only be able to view Village documents after receiving approval by the Mayor or Deputy Mayor. The documents would be viewed by appointment only and under the supervision of the Mayor or Deputy Mayor. Motion 315/2018 read as follows:

That during his suspension, Councilor [sic] [name of suspended council member] will not be entitled to receive any copies of village documents. He will be entitled to view these by appointment only and under the supervision of the Mayor or Deputy Mayor after approval of any request by the Mayor or Deputy Mayor. No copies of any documents will be taken.

- [4] Both motions 314/2018 and 315/2018 were carried.
- [5] During the council meeting on October 12, 2018, motion 444/2018 that extended the councillor's suspension to December 12, 2018, and that any restrictions imposed on the councillor would remain in effect, was carried.
- [6] Then, a special council meeting took place on October 25, 2018. Council did not allow the suspended councillor to attend.

[7] Then, as it will be discussed later in this Report, the Applicant submitted an access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the Village. The date of the access to information request was November 28, 2018.

[8] Then, in a Saskatchewan Court of Queen’s Bench Decision (QBG 379 of 2018 JCPA (Sask QB)), Acton J. quashed the resolutions of May 13, 2018, June 13, 2018, October 12, 2018 and October 25, 2018. Acton J. determined that the resolutions do not comply with section 402 of *The Municipalities Act*.

Access to information request

[9] As mentioned earlier, the suspended councillor, who is also the Applicant in this case, submitted a lengthy and detailed access request dated November 28, 2018 to the Village. The access request is divided into four parts (parts A, B, C, and D) with many subsections in each part. Furthermore, Parts A, C, and D begin with a quote from the Village meeting minutes. Below, I have reproduced the quotes and the itemized lists of information that follows each quote.

A.

[Quote]

314/2018 [Name of council member]:

That as a result of continued violations and complaints by the public and Council members against Councilor [name of Applicant], his suspension of May 12th, 2018 by resolution 175/2018 is hereby extended a further 60 days from August 15th, 2018 to expire October 15th, 2018 without any remuneration.

SECONDED: [Name of council member]

<u>Recorded Vote:</u>	[Name of council member]	[Name of council member] –
	– Yes	No
	[Name of council member]	[Name of council member] –
	– Yes	Yes

CARRIED

[End of quote]

1 Initiating documentation:

1.1 " continued violations"

Full of particulars of the alleged violations constituting the

i) previous and

ii) continued violations

Setting out with full particulars in each instance the:

iii) Date and time of the complaint or complaints

iv) The person or persons making the complaint(s) and their contact information

v) Whether the complaint is evidenced in writing or otherwise and in any event full particulars and a copy thereof

vi) Are the complaint(s) given under oath and if so a copy of the sworn instrument

vii) What are the alleged violation(s): identifying then [sic] by place or location, along with date, time, location and a full description of a violation alleged to have occurred.

viii) Is the violation(s) with respect to a moral, legal, legislative and/or regulatory prohibited activity and if so, full particulars and supporting documentation together with the foundational document from which the violation is drawn, sourced or asserted, including section and subsections where available.

ix) Date and time and form of communications used to notify the complaint to [Name of Applicant]

x) a copy of the full record of any and all proceedings relating to the finding a violation(s) occurred or was committed as alleged and what the facts relied on to support such conviction or of the violation and were reasons given and if so copy of the same together with any related documents.

xi) did the proceeding or hearing, if any, take place before or after Reso. [sic] 314 was passed on July 13?

xii) The responses if any by [Name of Applicant] to the complaint.

1.2 complaints by the public and Council members

i) Whether the complaint by the public is evidenced in writing or otherwise and if so a copy of the same including any relating correspondence or memorandum passing between the public and the council or members of the Council as between Council, the public and the staff of the RVCL and in such an event a copy of the same.

ii) Are the complaint(s) under oath and if so a copy of the sworn instrument

iii) The name or names of the members of the public and their contact information together with their complaint and all memorandum, including emails, pertaining to that complaint passing between the said member of the public and the RVCL, its Staff and the Council members, including email and or correspondence between the said persons between them and any member of council or administration of the Resort Village fo [sic] Candle Lake.

iv) Whether the complaint by the council member(s) is evidence in writing or otherwise and if so, a copy of the same and any relating correspondence or memorandum including emails, pertaining to that complaint passing between the said member the public. the RVCL, its Staff and the Council members, including email and or correspondence between the said persons

2 Evidentiary documentation

i) all documents evidence testimony and third party evidence referred to and or relied upon in coming to the result and conclusion it did in effecting the suspension.

ii) Date time and manner that the above documentation, evidence testimony and third party evidence was presented to [Name of Applicant]

iii) Date time and location after provision of the documents set out in paragraph i) & ii) above wherein [Name of Applicant] was given an opportunity to review and respond.

iii) Copies of all correspondence from legal counsel or third parties relied on or referred to in formulating the decision to suspend

iv) Whether the consultation with legal counsel was authorized by Resolution and if so a copy of that resolution

B.

[Quote]

303/2018 [Name of council member]

That [Name of Applicant] be removed from this meeting for contravening the Code of Ethics Bylaw by not treating the Mayor with respect.

SECONDED: MATKOWSKI

<u>Recorded Vote:</u>	[Name of council member] – Yes	[Name of council member] – No
	[Name of council member] - Yes	[Name of council member] – Yes

CARRIED

Administrative Note: [Name of Applicant] refused to leave.

[End of quote]

i) Particulars as to the portion of the Code of Ethics [COE] by law section or sections which are, were or alleged to have been contravened.

ii) Was a hearing convened under the provisions of the COE by law prior to the concluding that [Name of Applicant] be removed

iii) All correspondence memorandum or audio report used relied on to support the alleged contraventions COE by law

iv) All memorandum, legislation policies are bylaws relied on by the council in Reso [sic] 303/2018 to support the action or actions contemplated by the resolution with specific reference to memorandum, legislation policies are bylaws including, where applicable the process identified for implementing the action taken to legitimise and make the process legal. .

v) was any hearing conducted with respect the actions taken in resolution 303

vi) was any hearing conducted in camera before the removal was contemplated and presented in the form of Reso. [sic] 303/2018?

vi) what was the Mayor doing at the time or just before the time it is alleged [Name of Applicant] was " not treating the Mayor with respect."

v) was any consideration given or implementation considered or reliance had with respect to Council Procedures Bylaw 02/2016 or decisions made with prior to or during consideration of the motion before being voted on

vi) did the Chair at any time make a call the member [Name of Applicant] to order as it does not appear to be in the Minutes?

vii) Did the Chair or any member of council call or raise a Point of Order, Point of Privilege or Point of Procedure during the meeting in relation to Reso. 303/2018?

C. How much remuneration has been withheld from Councillor [name of Applicant] since July 13, 2018. [sic]

D.

[Quote]

Resort Village of Candle Lake Council Meeting
July 13th, 2018

A Council Meeting of Council for the Resort Village of Candle Lake was held on July 13th, 2018, in the Council Chambers at Candle Lake, SK.

ATTENDANCE: The following were in attendance:

[Name of council member]	- Mayor
[Name of council member]	- Councillor
[Name of council member]	- Councillor
[Name of council member]	- Councillor

[Name of Administrator] – Administrator

[Name of Assistant Administrator] – Assistant Administrator

<u>ABSENT:</u>	[Name of Applicant]	- Councillor
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Note: Councillor [Name of Applicant] was present at the council meeting table. Having been suspended pursuant to Council Motion 175/2018, Councillor [Name of Applicant] was requested by the Mayor to leave and refused to comply with the request. The Mayor then directed that Councillor [Name of Applicant] is not to be recognized as a participating member of Council as it related to this meeting but rather an observing member of the gallery.

[End of quote]

i) Is the Mayor's direction found in the Note: supported by a resolution dully [sic] made and passed by the municipal council and if so, a copy of that resolution.

ii) At all memorandum legislation policies are bylaws relied on by the council in Reso. 303/2018 PCL to support their action or actions contemplated by the resolution with specific reference to RVCL bylaws and or legislation including, where applicable the process identified for implementing the action taken to rendered legal and legitimate the actions contemplated by the Note:

iii) what is the authority relying on by the RVCL to support the Mayor's action to oust elected officials from the council chamber,

iii) [sic] If the mayor has acted unilaterally, what actions if any have the members of council taken to correct the situation and

iv) what is the source of the Mayor's authority relied on an positioning council has set out in the "Note"

[10] In a letter dated December 17, 2018, the Village responded to each item of the Applicant's access request with one of the following responses:

- "No record has been identified, please identify what records you are requesting."
- "Complaints in relation to Motion 314/2018 were heard at an incamera [sic] meeting on July 13, 2018 and are withheld pursuant to Section [sic] 15(b)(i) [sic] of the [sic] *Local Authority Freedom of Information and Privacy [sic] Act* (LAFOIP).
- "Correspondence from legal Council [sic] are withheld pursuant to Section [sic] 21 of the [sic] *Local Authority Freedom of Information and Privacy [sic] Act* (LA FOIP)"

[11] Furthermore, the Village referred the Applicant to the approved meeting minutes and the Code of Ethics Bylaw 32 of 2016 on the Village's website at www.candlelakeresort.ca.

[12] On January 16, 2019, the Applicant requested a review by my office.

[13] In an email dated April 8, 2019, the Village clarified that it meant to quote subsection 15(1)(b)(i) of LA FOIP in its letter dated December 17, 2018 to the Applicant, not "15(b)(i)" of LA FOIP.

[14] On April 8, 2019, my office notified both the Applicant and the Village that it would be undertaking a review.

II RECORDS AT ISSUE

[15] The records at issue are as follows:

Record #	Record Description	Exemption(s) applied by the Village
1	Complaint by Individual A. Consists of a complaint form and enclosures.	15(1)(b)(i), 21(a), 21(b), 21(c)
2	Complaint by Individual B. Consists of a complaint form and enclosures.	15(1)(b)(i), 21(a), 21(b), 21(c)
3	Email from the Village to Village's solicitor. Attached to the email is the Complaint by Individual B.	21(a), 21(b), 21(c)
4	Letter from the Village's solicitor to the Village in response to the above email.	21(a), 21(b), 21(c)
5	Letter from the Village's solicitor to the Applicant.	21(a), 21(b), 21(c)

[16] Another issue in this review, not involving records, is how the Village met its duty to assist pursuant to section 5.1 of LA FOIP.

III DISCUSSION OF THE ISSUES

1. Does LA FOIP apply and do I have jurisdiction to review this matter?

[17] The Village qualifies as a local authority pursuant to subsection 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to review this matter.

2. Is the issue of exemptions applied to records 1, 2, and 5 moot?

a. Records 1 and 2

[18] The Village cited subsections 15(1)(b)(i), 21(a), 21(b), and 21(c) of LA FOIP as its reasons for withholding records 1 and 2. However, in its submission, the Village indicated that the Applicant already has a copy of records 1 and 2 in their possession. The Village explained that since the Applicant is a council member, the *in camera* agenda was sent to the Applicant on July 6, 2018. Attached to the *in camera* agenda was a copy of the Code of Ethics complaints (records 1 and 2). It provided me with a copy of an email dated July 6, 2018 that shows what the Village's Administrator sent to council members, including the Applicant, the *in camera* agenda and the attachments.

[19] Since records 1 and 2 have already been sent to the Applicant, I must determine if there is any useful purpose in analyzing whether any exemption applies to records 1 and 2. In *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342, the Supreme Court of Canada said the following mootness and set out a two-step analysis to determine whether a case is moot:

The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice. The relevant factors relating to the exercise of the court's discretion are discussed hereinafter.

The approach in recent cases involves a two-step analysis. First it is necessary to determine whether the required tangible and concrete dispute has disappeared and the issues have become academic. Second, if the response to the first question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case. The cases do not always make it clear whether the term "moot" applies to cases that do not present a concrete controversy or whether the term applies only to such of those cases as the court declines to hear. In the interest of clarity, I consider that a case is moot if it fails to meet the "live controversy" test. A court may nonetheless elect to address a moot issue if the circumstances warrant.

[20] Ontario's Office of the Information and Privacy Commissioner (ON IPC) has applied the two-step analysis from *Borowski v. Canada (Attorney General)* in its Order MO-3683 to determine if a case is moot. The ON IPC has taken the position that when the requester has already obtained access to the record at issue, their adjudicators have declined to make a determination on the application of exemptions claimed to withhold records on the basis that the appeal is moot. In Order MO-3683, ON IPC said the following:

...the fact that the requester has obtained a copy of the record at issue by legitimate means (through a prior access request to the city) means that any determination regarding access would have no practical effect. I am not persuaded by the

circumstances or the information before me that there are any factors weighing in favour of my continuation of this appeal in respect of the surveyor's report. Accordingly, I find that this appeal is moot and that no useful purpose would be served by proceeding with a determination of the application of the section 10(1) exemption to the surveyor's report.

[21] Similar to the ON IPC, I also adopt the two-step analysis in *Borowski v. Canada (Attorney General)* to determine if an issue is moot. Since the Village has already sent the records to the Applicant in an email dated July 6, 2018, then there is no need for me to determine if any exemption applies to records 1 and 2. I find that the issue of whether any exemptions apply to records 1 and 2 is moot.

[22] I note that the Applicant does not specifically request records 1 or 2 in their access request. The Applicant requested information about complaints related to motion 314/2018 in Part A of the access request. In the course of processing the access request, a phone call or a letter by the Village to the Applicant indicating that the records it identified as responsive to Part A of the access request were already given to him in an email dated July 6, 2018. In other words, the responsive records are in the Applicant's possession. This would have been an opportunity to have narrowed the scope of the Applicant's access request and possibly would have narrowed the scope of my office's review.

[23] I recommend that the Village advise the Applicant that records 1 and 2 were identified as responsive records and were already provided to them in an email dated July 6, 2018.

b. Record 5

[24] The Village applied subsections 21(a), 21(b), and 21(c) of LA FOIP to record 5. Record 5 is a letter from the Village's solicitor to the Applicant. The letter itself indicates that it was sent to the Applicant via mail and email. Since the Village's solicitor has already sent record 5 to the Applicant, then there is no need for me to determine if any exemption applies to it. I find that the issue of any exemptions applying to record 5 is moot. I recommend that the Village advise the Applicant that it has identified record 5 as a responsive record and that record 5 has already been given to them via regular mail and email by the solicitor.

Again, in the course of the processing of the access request, the Village should have communicated to the Applicant that record 5 was identified as a responsive record, but that the record had already been sent to the Applicant. This could have narrowed the scope of the Applicant's access request as well as the scope of my office's review.

3. Has the Village properly applied section 21 of LA FOIP?

[25] The Applicant requested, "copies of all of all correspondence from legal counsel or third parties relied on or referred to in formulation of the decision to suspend."

[26] The Village provided my office with a copy of the records to which it is applying section 21 of LA FOIP. I commend the Village for providing my office with the records so that my office does not have to conduct the analysis on a prima facie case. The Village applied section 21 of LA FOIP to records 1, 2, 3, 4, and 5. As determined above, I will not be reviewing if section 21 of LA FOIP applies to records 1, 2, or 5, because the Village has already provided the Applicant copies of these two records.

[27] In its letter dated December 17, 2018 to the Applicant, the Village responded as follows:

Correspondence from legal Council [sic] are withheld pursuant to Section [sic] 21 of the Local Authority Freedom of Information and Privacy [sic] Act (LAFOIP) and the complaints in relation to Motion 314/2018 were heard at an incamera meeting on July 13th, 2018 and are withheld pursuant to Section [sic] 15(b)(i) [sic] of the Local Authority Freedom of Information and Privacy [sic] Act (LAFOIP).

[28] The Village did not specify which particular subsection of section 21 of LA FOIP that it is relying on to withhold the records. In its October 21, 2019 email to my office, the Village indicated the following:

Both the Code of Ethics Complaints and the letter of legal opinion from our solicitor are currently subject of an investigation by the Office of the Ombudsman as well outstanding legal proceedings between the RVCL and [the Applicant]. Releasing the opinion letter to [the Applicant] may jeopardize these legal proceedings.

[29] Based on the above, the Village is relying on section 21 of LA FOIP to withhold the copies of the complaints in addition to the correspondence between it and its solicitor. In other words, the Village is relying on section 21 of LA FOIP to withhold all the records at issue in this review.

[30] Section 21 of LA FOIP provides as follows:

21 A head may refuse to give access to a record that:

- (a) contains any information that is subject to any privilege that is available at law, including solicitor-client privilege;
- (b) was prepared by or for legal counsel for the local authority in relation to a matter involving the provision of advice or other services by legal counsel; or
- (c) contains correspondence between legal counsel for the local authority and any other person in relation to a matter involving the provision of advice or other services by legal counsel.

[31] Below, I will determine if any of the three subsections of section 21 of LA FOIP applies to records 3 and 4.

Subsection 21(a) of LA FOIP

[32] My office has established the following test for subsection 21(a) of LA FOIP.

1. Is the record a communication between solicitor and client?
2. Does the communication entail the seeking or giving of legal advice?
3. Was the communication intended to be confidential?

[33] I will analyze each step of these three steps.

1. Is the record a communication between solicitor and client?

[34] Based on a review of the records, I find that records 3 and 4 are communications or parts of communications between the Village and its solicitor. The first part of the test is met for these three records.

2. *Does the communication entail the seeking or giving of legal advice?*

[35] Based on a review, records 3 and 4 are a part of communications between the Village and its solicitor where legal advice is sought and given. I find that the second part of the test is met.

3. *Was the communication intended to be confidential?*

[36] Based on the content of records 3 and 4, it appears that the communication would have been intended to be confidential. As described in the Records at Issue section, record 3 is an email from the Village to the Village's solicitor. The Village is seeking legal advice. Record 4 is a letter from the Village's solicitor's to the Village where the solicitor provides legal advice. I find that such communications would have been intended to be confidential between solicitor and client. I find that the third part of the test is met.

[37] Based on the above, I find that the Village properly applied subsection 21(a) of LA FOIP to records 3 and 4. I recommend that the Village continue to withhold records 3 and 4.

[38] Since I find that subsection 21(a) of LA FOIP applies to records 3 and 4, there is no need for my office to determine if subsections 21(b) or 21(c) of LA FOIP applies.

4. *Has the Village met the duty to assist?*

[39] The duty to assist is set out in subsection 5.1(1) of LA FOIP, which provides as follows:

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.

[40] As noted in the Background section of this Report, the Village responded to many parts of the Applicant's request in its December 17, 2018 letter as follows:

No record has been identified, please identify what records you are requesting.

[41] In its submission to my office, the Village indicated that it sent a letter to the Applicant where it: 1) sought clarification from the Applicant for some parts of the access request, and 2) provided records to the Applicant to respond to other parts of the Applicant's access request. Its submission provided:

The Duty to Assist is taken seriously and we want to ensure that we are providing all of the records available, but if there is no clarification as to what record is being requested, it's unclear how we can accommodate the request....When it was still not clear, I took the necessary steps to try to clarify the record in a letter sent to [the Applicant] on December 27th, 2018 [sic]. In the letter, I responding [sic] to each request individually and respectfully as to not deter the Applicant. To date, we have not received a response clarifying these records from the Applicant.

...

As evidenced by the letter sent to Mr. [Name of Applicant] on December 27th, 2018 [sic], where there was a record identified that was not subject to an exemption under LAFOIP, that record was included in the response.

[42] The Village asserted that some parts of the Applicant's access request were not for records, but for information. This made it difficult to know what records the Applicant was seeking. Therefore, it sought clarification pursuant to subsection 6(3) of LA FOIP. The Village's submission said:

Many of the request made by [the Applicant] were unclear or speculative. For example, [the Applicant] asked in his request for dates and times, what someone was doing, information relied on by an individual or locations. From my understanding under LAFOIP Section 5, the Right of Access applies to records in the care of and control of the municipality. It was not clear under the Access Request what record was being requested. Therefore, records were not withheld or denied but rather clarification was sought of [the Applicant] pursuant to Section 6(3) of LAFOIP in an effort to identify what record he was requesting so that the Head could try to accommodate the request.

[43] The Applicant provided a lengthy and detailed access request that is quoted from pages 3 to 8 in the Background section of this Report. Based on the specificity of the detail in the access request, it is not necessary to rely on subsection 6(3) of LA FOIP to require additional information from the Applicant. When a local authority receives an access request that is in the form of a question or a series of questions, it must still determine what records it has that may be responsive to the questions. This position is also taken by the ON IPC. In Order MO-2285, the ON IPC provided as follows:

In short, institutions that receive a request for access that is in the form of a question or series of questions must determine what records they have that may be responsive to the questions and provide an access decision based on those records. This duty is the same regardless of the nature of the information sought.

[44] Based on the access request, it appears that the Applicant is interested in records that relate to their removal from council meetings (motion 303/2018), their suspension as a council member (motion 175/2018), and the extension of their suspension (motion 314/2018). While the Village may not have records that can respond to each part of the Applicant's access request, it would have been productive and helpful if the Village identified the records it does have related to the Applicant's removal from council meetings, their suspension as a council member, and the extension of their suspension, even if such records do not squarely answer the questions set out by the Applicant. Page 2 of my office's resource *Understanding the Duty to Assist*, provides that an example of reasonable efforts to assist the Applicant is providing information to the Applicant about what records are in the local authority's possession or control. If it does not have any records related to the themes set out in the access request, then it should indicate that to the Applicant as well.

[45] I find that the Village should not have relied on subsection 6(3) of LA FOIP. I find that the Village has not met its duty to assist.

[46] While I find that the Village could have been helpful by identifying the records it does have related to the themes set out in the access request, I note that the Applicant is a councillor. As a councillor, they receive council meeting agendas and minutes (and attachments). Since they also represent citizens, they also may receive records from citizens as well. This suggests that not only would the Applicant have a good idea of what types of records the Village would have, but that they likely have some of those records in their possession already. Therefore, the Applicant could also make efforts to scope out the records they already have in their possession so as not to make the Village make unnecessary efforts in processing the access request.

[47] In the Background section of this Report, I noted that conflict exists between the Village and the Applicant. The Village made a resolution that restricted the Applicant's access to

records, which was ultimately quashed. This resolution may have resulted in the Applicant having no choice but to rely on making a formal access request under LA FOIP to the Village for records. If the resolution was not made, then I would have expected that the Applicant would be confident they have received the records necessary for them to fulfill their duties as a council member and would not have necessarily needed to rely on LA FOIP to request access to records. This does not mean that the Applicant should be entitled to any and all records though. The Village has a duty to protect personal information pursuant to section 23.1 of LA FOIP, so the Applicant should not necessarily be given access to records containing others' personal information, especially if they do not have a need-to know. Furthermore, as exemplified by my findings for records 3 and 4, there will be instances that the Village can rightfully withhold records from the Applicant.

[48] I recommend that the Village and the Applicant work together in the future so that the Applicant has access to the records necessary for them to do their duties as a council member and to minimize the Applicant's need to rely on LA FOIP to gain access to records.

IV FINDINGS

[49] I find that the issue of determining whether any exemptions apply to records 1 and 2 to be moot.

[50] I find there is no need for me to determine if section 21 of LA FOIP applies to record 5 since it has already been sent to the Applicant so this issue is also moot.

[51] I find that the Village properly applied subsection 21(a) of LA FOIP to records 3 and 4.

[52] I find that the Village should not have relied on subsection 6(3) of LA FOIP.

[53] I find that the Village has not met its duty to assist.

V RECOMMENDATIONS

- [54] I recommend that the Village advise the Applicant that records 1 and 2 were identified as responsive records and were already provided to them in an email dated July 6, 2018.
- [55] I recommend that the Village advise the Applicant that it has identified record 5 as a responsive record and that record 5 has already been given to them via regular mail and email by the solicitor.
- [56] I recommend that the Village continue to withhold records 3 and 4.
- [57] I recommend that the Village and the Applicant work together in the future so that the Applicant has access to the records necessary for them to do their duties as a council member and to minimize the Applicant's need to rely on LA FOIP to gain access to records.

Dated at Regina, in the Province of Saskatchewan, this 29th day of January, 2020.

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