



REVIEW REPORT 064-2019

Saskatoon Downtown Business Improvement District

October 29, 2019

Summary: The Applicant submitted an access to information request to the Saskatoon Downtown Business Improvement District (SDBID). SDBID responded by providing the Applicant access to records. The Applicant was not satisfied because they believed additional records existed. Therefore, the Applicant appealed to the Information and Privacy Commissioner. The Commissioner found that SDBID conducted an adequate search for records. However, the Commissioner recommended the SDBID establish email management practices that includes employees regularly saving emails related to BID programs and activities to a common drive.

I BACKGROUND

[1] In a letter dated November 22, 2018, the Applicant submitted the following access request to the Saskatoon Downtown Business Improvement District (SDBID):

Please send to the address above all information retained by your organization relating to me or relating to alleged violations of the Poster Bylaw 7565 in 2017 and 2018.

Also send all manuals, policies, guidelines or procedures relating to posters or maintenance of poster boards. By “posters” I mean any material intended for posting in accordance with the Poster Bylaw by citizens, BID employees or any other person or organization.

[2] In a letter dated February 4, 2019, SDBID responded to the Applicant’s request. The letter said:

This is to inform you that your access request has been fully granted. Enclosed in a copy of the records you requested.

[3] In an email dated February 21, 2019, the Applicant requested a review by my office. The email said the following:

Please review the Downtown Business Improvement District's response to my request for records. Constable Penner wrote my request was “fully granted”.

If so it would mean his organization didn't create any records relating to police reports they made against me. There were no records created when I “stabbed” his Operations Manager and no records relating to their surveillance of me or the operation to target and remove my posters.

Although the City's lawyers have written about how disturbed the BID is regarding contact with me they've created no records of such disturbance. My questions of BID employees have revealed an evolving policy of content based poster removal that they've enacted without creating any record.

[4] In an email dated February 21, 2019, the Applicant elaborated why they believed additional records existed. In an email exchange on February 25, 2019, the Applicant confirmed with my office that they believed the following four types of records existed:

- Records relating to police reports filed against the Applicant,
- Records relating to the instance where the Applicant “stabbed” the Operations Manager,
- Records related to surveilling the Applicant, and
- Records related to targeting and removing the Applicant's posters.

[5] In an email dated February 26, 2019, my office conveyed to the SDBID that the Applicant believed the above types of records existed.

[6] Then, in a letter dated March 5, 2019 to the Applicant, SDBID indicated that it was transferring the Applicant's access request to the Saskatoon Police Service (SPS) as the SDBID believed that the SPS had a greater interest in the records relating to a police report filed with the SPS. SDBID indicated it was transferring the access request pursuant to subsection 11(2)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[7] In another letter dated March 5, 2019, SDBID sent to my office a response to address the four points listed at paragraph [4].

[8] In an email dated March 8, 2019 to my office, the Applicant advised that they received the SDBID's letter dated March 5, 2019 that indicated that SDBID transferred the access request to SPS. The Applicant indicated, "...I accept the response is in accordance with the cited section". However, the Applicant indicated that they wished for my office to move forward with a review regarding SDBID's search efforts.

[9] In emails dated March 13, 2019, my office notified both the Applicant and SDBID that it would be undertaking a review.

II RECORDS AT ISSUE

[10] At issue is SDBID's efforts to search for records. Therefore, there are no records at issue.

[11] Furthermore, since the Applicant did not raise issues with SDBID transferring a part of the access request to the SPS pursuant to subsection 11(2) of LA FOIP, search efforts for any records relating to a police report filed with the SPS will not be a part of this review.

III DISCUSSION OF THE ISSUES

1. Does LA FOIP apply?

[12] Subsection 2(f)(v) of LA FOIP provides as follows:

2 In this Act:

...

(f) "local authority" means:

...

(v) any board, commission or other body that:

(A) is appointed pursuant to *The Cities Act*, *The Municipalities Act* or *The Northern Municipalities Act, 2010*; and

(B) is prescribed;

[13] Subsection 3(1) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) provides:

3(1) For the purposes of subclause 2(f)(v) of the Act, the bodies set out in Part I of the Appendix are prescribed as local authorities.

[14] Part I of the Appendix of the LA FOIP Regulations provides as follows:

1. A board, commission or other body established pursuant to *The Cities Act*

[15] Subsection 25(1) of *The Cities Act* provides as follows:

25(1) A council may, by bylaw, establish a business improvement district.

[16] Bylaw No. 6710 of the City of Saskatoon is the bylaw that establishes SDBID as a business improvement district.

[17] I find that SDBID qualifies as a local authority pursuant to subsection 2(f)(v) of LA FOIP. I find that LA FOIP applies to this matter. Therefore, I have jurisdiction to conduct this review.

2. Did the SDBID conduct an adequate search for records?

[18] Section 5 of LA FOIP provides every person a 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.

[19] Section 5 of LA FOIP 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.

[20] 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.

[21] 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.

[22] 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, which can include:

- 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.
- 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.

[23] As stated in the background at paragraph [4], the Applicant believed the following four types of records existed, but was not provided:

- Records relating to police reports filed against the Applicant,
- Records relating to the instance where the Applicant “stabbed” the Operations Manager,
- Records related to surveilling the Applicant, and
- Records related to targeting and removing the Applicant's posters.

Records relating to police reports filed against the Applicant

[24] As noted in the background, SDBID wrote a letter dated March 5, 2019 to the Applicant indicating it believed that the SPS had greater interest in the records relating to a police report filed with the SPS. As a result, SDBID transferred the Applicant's access request to the SPS pursuant to subsection 11(2)(a) of LA FOIP. The Applicant indicated, “I accept

the response is in accordance with the cited section” in an email dated March 8, 2019 to my office. Since the Applicant did not request a review over the transfer of this portion of the access request, I will not be reviewing SDBID’s search efforts for records related to police reports.

Records relating to the instance where the Applicant “stabbed” the Operations Manager

[25] As noted above, SDBID’s Executive Director identified records related to a police report filed with the SPS. These records relate to an incident in which the Applicant “stabbed” the Operations Manager. Therefore, the access request was transferred to the SPS.

[26] In efforts to locate additional records related to the incident where the Applicant “stabbed” the Operations Manager, SDBID’s Executive Director called the Operations Manager and asked if they noted the incident in any written fashion, such as a claim with the Saskatchewan Workers’ Compensation Board (WCB). The Operations Manager indicated that they did not document the incident in any written fashion.

[27] I find that SDBID contacting the Operations Manager to determine if additional records were created to document the incident in which the Applicant “stabbed” the Operations Manager, to be appropriate. Later in this Report, I will discuss the search of electronic records.

Records related to surveilling the Applicant

[28] In its letter dated March 25, 2019, SDBID asserted that it does not conduct surveillance. SDBID’s purpose is to promote, shape, and enhance Saskatoon’s downtown as a destination for retail, business, cultural, and residential development; and to create, promote and program downtown experiences that attract Saskatoon residents and visitors. It does not conduct surveillance. Therefore, it does not have any records related to surveilling the Applicant.

[29] The Applicant has not provided my office with a basis or evidence for why they believe that SDBID would have records of surveillance of the Applicant.

[30] I find SDBID's explanation as to why it does not have records related to surveilling the Applicant to be satisfactory.

Records related to targeting and removing the Applicant's posters

[31] In its letter dated March 25, 2019, SDBID explained it did not keep a hard copy file or any printed material related to any of the matters cited by the Applicant. Rather, it advised that it keeps its information on a Google Drive file system. SDBID was able to search the entire drive with the Applicant's name. SDBID asserts that the records that were located in the search of the drive was provided to the Applicant enclosed in a letter dated February 4, 2019.

[32] In emails dated September 10, 2019, SDBID's Executive Director indicated that they had searched their email account using the Applicant's name as the search term. My office inquired whether or not any other BID employees' email accounts were searched, including the Operations Manager. SDBID explained that no other BID employees' email accounts were searched. They explained that when SDBID received the Applicant's access request, the Operations Manager was no longer an employee. As such, the Operations Manager's email account no longer existed.

[33] I find that SDBID's efforts to search through its Google Drive file system and the Executive Director's email account using the Applicant's name as the search term to be appropriate.

[34] However, I find that SDBID's management of emails to be inadequate. Emails related to SDBID programs and activities that are sent and received by an employee should be retained by the local authority even after the employee leaves. I recommend that SDBID establish email management practices that includes employees regularly saving emails related to BID programs and activities to a common drive (such as the SDBID's Google Drive file system) so that emails are searchable even when the employee leaves.

IV FINDINGS

- [35] I find that SDBID qualifies as a local authority pursuant to subsection 2(f)(v) of LA FOIP.
- [36] I find that LA FOIP applies to this matter.
- [37] I find that SDBID contacting the Operations Manager to determine if additional records were created to document the incident in which the Applicant “stabbed” the Operations Manager to be appropriate.
- [38] I find SDBID’s explanation as to why it does not have records related to surveilling the Applicant to be satisfactory.
- [39] I find that SDBID’s efforts to search through its Google Drive file system and the Executive Director’s email account using the Applicant’s name as the search term to be appropriate.
- [40] I find that SDBID’s management of emails to be inadequate.

V RECOMMENDATION

- [41] I recommend that SDBID establish email management practices that includes employees regularly saving emails related to BID programs and activities to a common drive (such as the SDBID’s Google Drive file system) so that emails are searchable even when the employee leaves.

Dated at Regina, in the Province of Saskatchewan, this 29th day of October, 2019.

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