



REVIEW REPORT 066-2019

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 no response, the Applicant made a request for review to the Information and Privacy Commissioner (the Commissioner). Upon review, the Commissioner found that the Village was deemed to have refused access to all or part of the record as a result of failing to provide a section 7 response to the Applicant. Further, that the Village had not identified any exemptions under Part III of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to rely on to withhold the records. The Commissioner recommended the Village release the records to the Applicant. Further, the Commissioner recommended the Village develop a policy and procedure for processing access to information requests and provide a copy to the Commissioner's office and the Ministry of Government Relations within 30 days. This is the 16th Report that the Commissioner has issued regarding the Village.

I BACKGROUND

- [1] On January 18, 2019, the Northern Village of Pinehouse (the Village) received an access to information request from the Applicant via Canada Post. The Applicant requested access to:

We know from a news report by MBC Radio (“Harpauer cleared of conflict of interest in accepting accommodations paid for by Pinehouse” by Dan Jones and Fraser Needham, Dec 18, 2018), Donna Harpauer and her conjugal partner visited Pinehouse at least twice, in Aug. 2016 and Aug. 2018.

I wish to have copies of the Northern Village of Pinehouse's financial transaction records indicating payment by the Village in these instances or any other such visits for:

- (1) Ms. Harpauer's and/or her partner's hotel accommodation;
- (2) Any other meals or other considerations paid by the Village for Ms. Harpauer and/or her partner on the occasion of those visits;
- (3) Any expense and/or fees for guide services provided for Ms. Harpauer and/or her partner by John Durocher Jr. on those occasions; AND
- (4) The budget/sub-account name and number in the financial records to which these transactions were attributed.

NOTE: Payment may not have been made for several months following the visits.

- [2] On February 24, 2019, my office received a request for review from the Applicant. The Applicant indicated he had not received a response from the Village.
- [3] On February 28th and March 1st, 2019, my office attempted to contact the Village via telephone. Messages were left requesting contact. On March 1, 2019, my office also sent an email requesting contact. To date, no response was received.
- [4] On March 7, 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 the Village provide a submission explaining why the Village had not responded within the legislated timelines pursuant to section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The due date was March 22, 2019.
- [5] On March 19, 2019, my office received an email from the Village indicating it was working on the submission and would provide it by March 22, 2019.
- [6] On March 25, 2019, after receiving nothing from the Village, my office emailed the Village inquiring if the submission was on its way. No response was received until April 8, 2019 when the Village sent my office an email indicating there was a problem with their email account and requested the last four emails be resent. Further, the Village indicated it would "do the work to get the information to the applicants asap". My office followed up with the Applicant and he received no correspondence or records from the Village as of April 29, 2019.

[7] During a phone conversation with the Village Administrator later on April 8, 2019, the Village provided a different email address to use stating the regular Village email address had been compromised. Rather than resend emails, my office agreed to send the Village an email advising it of the status of each of the review files my office had, including this one. That email was sent to the Village on April 9, 2019. For the status of this review file, my office indicated that nothing had been received from the Village by the deadline of March 22, 2019. Further, that if the Village wanted to request a short extension in order to provide its submission it would need to let my office know as soon as possible. My office received no response to that email.

[8] On April 18, 2019, my office received an email from the Supervisor appointed to supervise the Village. The email contained four images of emails sent from my office to the Village. The images show the email headers but the body of the emails are blank. It is clear that the Village is having issues with its main email account. If this issue continues, I would encourage the Village to communicate with my office using the telephone or at least return my office's phone calls.

II RECORDS AT ISSUE

[9] It is unclear what the responsive records are, as the Village has not provided its formal response to the Applicant.

III DISCUSSION OF THE ISSUES

1. Does the Commissioner have jurisdiction?

[10] The Village is a local authority pursuant to subsection 2(f)(i) of LA FOIP. Thus, the Commissioner has jurisdiction to conduct this review.

2. Did the Village comply with section 7 of LA FOIP?

[11] Section 5 of LA FOIP states that an individual has a right to access records in the possession or under the control of a local authority, if an access to information request is made:

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.

[12] The Applicant utilized this right when he made an access to information request to the Village on January 18, 2019.

[13] Section 7 of LA FOIP instructs a local authority on what to do if it receives an access to information request:

7(1) Where an application is made pursuant to this Act for access to a record, the head of the local authority to which the application is made shall:

(a) consider the application and give written notice to the applicant of the head's decision with respect to the application in accordance with subsection (2); or

(b) transfer the application to another local authority or to a government institution in accordance with section 11.

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

(a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;

(b) if the record requested is published, referring the applicant to the publication;

(c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;

(d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;

(e) stating that access is refused for the reason that the record does not exist;
or

(f) stating that confirmation or denial of the existence of the record is refused pursuant to subsection (4); or

(g) stating that the request has been disregarded pursuant to section 45.1, and setting out the reason for which the request was disregarded.

(3) A notice given pursuant to subsection (2) is to state that the applicant may request a review by the commissioner within one year after the notice is given.

(4) If an application is made with respect to a record that is exempt from access pursuant to section 15, 16, 21, or 22 or subsection 29(1), the head may refuse to confirm or deny that the record exists or ever did exist.

(5) A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.

[14] Subsection 7(2) of LA FOIP requires local authorities to respond to applicants within 30 days of receipt of an access to information request.

[15] Pursuant to subsection 7(5) of LA FOIP, the Village failed to provide a section 7 response to the Applicant within the 30-day deadline. Therefore, it is deemed to have responded on the 30th day with a refusal to provide access. My office refers to this as a deemed refusal. The 30th day in this circumstance was Monday, February 18, 2019.

[16] The Village is now required to account for responsive records in its possession and/or control and only deny access to all or part of the records if permitted by the limited and specific exemptions in LA FOIP. However, at the time of this report, the Village has not done this. As such, the Village has not identified any exemptions in LA FOIP that it can rely on to withhold the records requested by the Applicant.

[17] Despite efforts by my office to connect with the Village, it continues to be difficult to get responses to emails and telephone messages. There continues to be a complete disregard by the Village for what LA FOIP requires of it. The purpose of LA FOIP is to enhance transparency and accountability within local government by providing citizens with the right of access to government records and the right of privacy over their personal information.

[18] This is now the 16th Review Report issued by my office involving the Village between 2013 and 2019.¹ Fifteen 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 13 of these cases.³ In one report, former Commissioner Dickson 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 Commissioner requested after the issuing of the public report. In Review Report 204-2018, the Commissioner 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.

[19] The lack of compliance with LA FOIP cannot continue. It appears from the reviews my office has handled in 2018 and 2019, the Village picks and chooses which applicants and access requests it wishes to respond to. This is unacceptable.

[20] In conclusion, I find that the Village did not meet its 30-day statutory deadline pursuant to subsection 7(2) of LA FOIP.

[21] Further, as no exemptions have been put forward as authority to withhold the records from the Applicant, I recommend the Village release the records to the Applicant.

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, 027-2019 and 066-2019.

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, 027-2019 and 066-2019. 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, 027-2019 and 066-2019.

IV FINDINGS

- [22] I find that the Village did not meet its 30-day statutory deadline pursuant to subsection 7(2) of LA FOIP.
- [23] I find that the Village is deemed to have refused access to all or part of the record as a result of failing to provide a section 7 response to the Applicant.
- [24] I find that the Village has not identified any exemptions in LA FOIP that it can rely on to withhold all or part of the records.

V RECOMMENDATIONS

- [25] I recommend the Village release the records to the Applicant.
- [26] 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.
- [27] I recommend the above policy and procedure include the steps in issuing a section 7 response and model template letters.
- [28] 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.

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

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