



## **REVIEW REPORT 088-2019**

### **Rural Municipality of Blaine Lake No. 434**

**September 18, 2019**

**Summary:**

The Rural Municipality of Blaine Lake No. 434 (the RM) received an access request for a resolution authorizing a road that was built on the Reeve's property. The RM identified a vague resolution from meeting minutes. The Applicant requested a review by the Commissioner. The Commissioner questioned the state of the RM's minutes and asked for an affidavit by the Reeve. An affidavit was not provided. The Commissioner found the RM did not perform a reasonable search for records and recommended that the RM provide an affidavit to both the Commissioner and the Applicant. This is the sixth report the Commissioner has issued involving the RM.

### **I BACKGROUND**

[1] The Rural Municipality of Blaine Lake No. 434 (the RM) received an access to information request that was postmarked February 20, 2019. The request was as follows:

New construction of a short section of road was carried out on the West side of [the Reeve's] quarter. This construction was on the south west end of the road bordering the west side of the SW quarter of [section coordinates]. Work occurred in the fall of 2018. I am requesting the carried resolution and the name of the councillor that made such a resolution approving this new construction. I am asking for the search for this record to go back seven years previous to February 20<sup>th</sup> 2019.

[2] On March 18, 2019, the RM provided a copy of resolution 180/18 from the June 14, 2018 minutes of the RM's Council meeting. The resolution refers to general repair of existing

roads and culverts as follows: “That the roads in the RM be fixed and culverts be fixed as well where they need to be”.

[3] On April 1, 2019, the Applicant requested a review of the RM’s search for records by my office. In the request, the Applicant indicated that the resolution identified by the RM covers repair of existing roads, not the creation of new roads.

[4] On April 11, 2019, my office notified both the RM and the Applicant of my intention to undertake a review.

## **II RECORDS AT ISSUE**

[5] As this review deals with the RM’s search for records, there are no records to review.

## **III DISCUSSION OF THE ISSUES**

### **1. Does *The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP)* apply in these circumstances?**

[6] The RM is a local authority pursuant to subsection 2(f)(i) of LA FOIP. Therefore, LA FOIP applies and I have jurisdiction to conduct this review.

### **2. Did the RM perform a reasonable search for records?**

[7] Section 5 of LA FOIP provides:

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 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.

- [9] In the notification email to the RM, my office requested that the RM describe its search efforts for the records in its possession or control that are responsive to the Applicant's request.
- [10] 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. LA FOIP does not require the local authority to prove with absolute certainty that records do not exist. However, it must demonstrate that it has conducted a reasonable search to locate them.
- [11] 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.
- [12] 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. Examples of the type of information that can be provided can be found in my office's resource *IPC Guide to Exemptions for FOIP and LA FOIP*.
- [13] In its submission to my office on April 25, 2019, the RM simply stated that the resolution that was provided to the Applicant is the directive that was used in going forth with building the road identified in the Applicant's access request.
- [14] On July 23, 2019, my office asked further questions about the RM's search for records for both requests. My office asked if the RM searched all of the RM's council minutes going back seven years as per the Applicant's request. My office requested that if the RM had not completed the search that it do so. My office also asked if any notes were searched. Finally, my office asked for more information as to how it was sure that the resolution identified was responsive to the Applicant's request.

- [15] The RM replied that it did not search the minutes from the past seven years as per the Applicant's request. It indicated that the Reeve had identified the appropriate resolution and that the RM did not have the manpower to conduct that kind of search. Further, it indicated that the previous administrator was "unfavorable" and there were no notes to search.
- [16] The RM did not provide the specific details that I required in this review. At the same time I was conducting this review, I also produced Review Report 132-2019. In that report, I reviewed the RM's lack of response for a request for council meeting minutes at the time the road in question was allegedly built on the Reeve's land. Also in that report, the RM did not provide a satisfactory explanation regarding the allegedly missing minutes and I found that the RM did not conduct a reasonable search for records. Given that the RM was not forthcoming with details and that there appeared to be missing minutes, I now question the RM's assertion that the resolution identified authorized a road to be built on private land.
- [17] On August 8, 2019, my office requested an affidavit by the RM's Reeve that confirmed that the resolution identified in the RM's response of March 18, 2019 to the Applicant is the record responsive to the request of the Applicant's access request of February 20, 2019. My office requested the affidavit by August 20, 2019, however, an affidavit was not received.
- [18] On August 21, 2019, my office asked again for an affidavit by August 23, 2019. Again, an affidavit was not received.
- [19] I recommend that the RM provide my office with the affidavit requested within seven days of issuance of this Report. I also recommend that the RM provide a copy to the Applicant.
- [20] I note that, prior to this report, I have issued five reports involving the RM of Blaine Lake. The RM has not provided a response to any of these five reports as required by section 45 of LA FOIP. This is the sixth report involving the RM and Review Report 132-2019, referred to earlier in this Report, is the seventh report. Most reports have centered around

the process and procedure to obtain records. I am beginning to have a concern that this RM does not have a respect for provincial laws such as LA FOIP.

#### **IV FINDING**

[21] I find the RM did not conduct a reasonable search for records.

#### **V RECOMMENDATION**

[22] I recommend that the RM provide my office with the affidavit requested within seven days of issuance of this report. I also recommend that the RM provide a copy to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 18th day of September, 2019.

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