



REVIEW REPORT 090-2015

Resort Village of Candle Lake

September 28, 2015

Summary:

The Applicant requested records from the Resort Village of Candle Lake (Candle Lake). Candle Lake responded indicating that access to records was refused pursuant to subsection 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) as records responsive to the request did not exist. Candle Lake also provided the Applicant with an invoice for fees related to the request. The Commissioner found that Candle Lake performed an adequate search for responsive records but that it did not have authority under LA FOIP to request fees related to this request. The Commissioner recommended that Candle Lake take no further action regarding search for records and it is recommended that no fees be collected in relation to this request for information.

I BACKGROUND

[1] On January 7, 2015, the Applicant completed an access to information request and submitted it to the Resort Village of Candle Lake (Candle Lake) for:

True copies of all and any bylaws or resolutions The Resort Village of Candle Lake Municipal Council pursuant to s. 126(2) of The Municipalities Act wherein Council delegated its powers or duties to the Administrator and/or [name of administrator]

[2] Candle Lake responded to the Applicant in a letter dated January 13, 2015 advising that the requested records did not exist and therefore access was refused pursuant to subsection 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] The Applicant also received an invoice dated January 27, 2015 totalling \$30.00 from Candle Lake for “LAFOIP Request [sic] Delegation of Municipal Council’s [sic] Powers.”

[4] On April 28, 2015, my office received a request for review from the Applicant for Candle Lake’s search efforts that resulted in the conclusion that records did not exist and a review of the fees associated with the request as indicated on the invoice issued by Candle Lake.

[5] In emails dated May 1, 2015, my office notified both the Applicant and Candle Lake of our intentions to conduct a review. My office requested a submission from Candle Lake regarding their search for responsive records and fees associated. The Applicant was also provided an opportunity to provide a submission.

II RECORDS AT ISSUE

[6] There are no records at issue as Candle Lake has indicated that there are no responsive records to the Applicant’s request.

III DISCUSSION OF THE ISSUES

[7] Candle Lake is a “local authority” as defined in subsection 2(f)(i) of LA FOIP.

1. Did Candle Lake conduct an adequate search?

[8] 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. 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. Candle Lake is not required under LA FOIP to prove with absolute certainty that records do not exist.

[9] Considerations for the public bodies when conducting a search are outlined on pages 60 and 61 of the *IPC Guide to Exemptions*, available on our website at www.oipc.sk.ca.

[10] Candle Lake indicated that three employees “examined all the administrative files to determine if there was information in the files related to the delegation of power... for any resolutions within the past 4 years... This will cover the total period of [name of administrator]’s employment.”

[11] My office contacted the Applicant and clarified that the Applicant was only looking for bylaws or resolutions during the period of employment identified by Candle Lake.

[12] A search was conducted in Candle Lake’s electronic file structure in folders related to bylaws and meeting minutes using keywords to try and locate responsive records. Candle Lake also indicated that it reviewed its bylaw manual in its entirety and hard copies of the minutes approved at Council meetings. However, Candle Lake indicated no responsive records were located.

[13] Based on the search efforts detailed above, it appears Candle Lake has performed a reasonable search for responsive records.

2. Did Candle Lake have authority to request fees?

[14] Candle Lake confirmed during a telephone conversation with my office that the Applicant paid the \$20 application fee when he submitted his access to information request.

[15] Candle Lake also provided an invoice to the Applicant in the amount of \$30.00 relating to this request. Candle Lake’s submission provided as follows regarding the fees invoiced:

The staff spent a considerable amount of time on this request as it was not clear exactly what was being sought. 2 staff persons spent over 4 hours reviewing the files and the administrator double checked the information. [The Applicant] was only charged 4 hours or \$30.00...

[16] Candle Lake indicated in their section 7 response to the Applicant that “your request for access is refused for the reason that the records do not exist. (s. 7(2)(e) [The] Local Authority Freedom of Information [and Protection of Privacy] Act...”

[17] Subsection 7(1) of the LA FOIP Regulations states:

7(1) No fees are payable pursuant to subsection 5(2) to 5(4) where access to a record is refused.

[18] As the LA FOIP Regulations state that fees are not payable when access to records is refused, public bodies do not have authority under LA FOIP to request fees over and above the application fee from the Applicant when records are withheld pursuant to an exemption or when responsive records do not exist.

[19] Additionally, when calculating fees for access to information requests, Candle Lake should ensure fees are calculated in accordance with the guidelines provided in the *IPC Guide to Exemptions*. These guidelines provided in this resource include that “search time does not include having someone review the results of the search” and that “generally, it should take an experienced employee 1 minute to visually scan 12 pages of paper or electronic records to determine responsiveness; Generally, it should take an experienced employee 5 minutes to search 1 regular file drawer for responsive file folders.”

[20] Lastly, when an Applicant submits a request, it is up to them to provide sufficient detail regarding the records they are seeking. If the request is unclear or Candle Lake requires further clarification, it “shall advise the applicant, and shall invite the applicant to supply additional details” pursuant to subsection 6(3) of LA FOIP if it is “unable to identify the record requested.” Subsection 6(4) of LA FOIP states that when clarification is requested, the request is “deemed to be made when the record is identified.”

[21] Once the request is received, Candle Lake also has a duty to assist the Applicant in identifying records or clarifying any portions of the request as Applicants may not have knowledge of the record keeping of a public body or what types of records would be responsive to the information they are seeking.

[22] After reviewing the Draft Review Report, Candle Lake advised my office that any fees associated with this request that had been collected would be returned to the Applicant.

IV FINDINGS

[23] I find that Candle Lake provided sufficient details to conclude it has conducted a reasonable search for responsive records.

[24] I find that Candle Lake did not have authority under LA FOIP to request fees over and above the \$20 application fee from the Applicant when notifying him that responsive records did not exist.

V RECOMMENDATIONS

[25] I recommend that Candle Lake not take any further action regarding search for responsive records.

[26] I recommend that Candle Lake not request any fees from the Applicant in relation to this request, and if any fees have been collected, return them to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 28th day of September, 2015.

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