



REVIEW REPORT 091-2015

Resort Village of Candle Lake

October 26, 2015

Summary:

The Applicant submitted an access to information request to the Resort Village of Candle Lake (Candle Lake) for records related to special meetings. Candle Lake provided records responsive to the request and advised that other requested records did not exist. Candle Lake also issued fees to the Applicant related to the request. The Commissioner found that Candle Lake had performed a reasonable search and that the fees charged to the Applicant required an amendment. The Commissioner recommended that Candle Lake take no further action regarding search for responsive records. The Commissioner also recommended that Candle Lake create a procedure for access requests involving fees and to amend its fees for photocopying the record.

I BACKGROUND

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

Special Meeting(s), Notice of pursuant to section 123(2) of The Municipalities Act

1. True copies of all Notices that were used to effect the required posting of notice of a Special Meeting of Council for the period January 1, 2014 to December 31, 2014 inclusive;
2. Whether it was the Mayor of a majority of Council who requested the Special Meeting in each instance and the names of the Councillor if the later together with a copy of the request;
3. Where any of the Special Meetings were called with less than 24 hours notice to the council and the public, a copy of the written waive of notice signed by

all members of council and in which event the time the said waivers were signed relevant to the commencement of the Special Meeting referenced in the waiver;

4. If there was any business that was conducted which was not specified in the Notice referred to above, than a copy of the unanimous consent of all member of Council identifying the “any other business...transacted”
5. A copy of any bylaw passed in contemplation of s 124(2)

[2] On January 13, 2015, Candle Lake provided copies of notices of special meetings and a copy of a waiver.

[3] Candle Lake’s January 13, 2015 response advised the Applicant that other records requested did not exist pursuant to subsection 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[4] The Applicant also received an invoice from Candle Lake for fees associated to this request.

[5] On April 28, 2015, the Applicant submitted a request for review to my office indicating that he believed there were other special meeting notices that had not been released to him. He also noted that one of the notices differed from that which the Applicant had a copy of prior to receiving a copy through the access to information request.

[6] My office contacted the Applicant and he clarified that he was also interested in a review of the records that Candle Lake had indicated did not exist and the fees associated with the request.

[7] On May 1, 2015, my office notified both the Applicant and Candle Lake of my office’s intention to review this matter.

II RECORDS AT ISSUE

[8] There are no other records at issue as Candle Lake has indicated that the records do not exist.

III DISCUSSION OF THE ISSUES

1. Has Candle Lake performed a reasonable search for responsive records?

a) True copies of all Notices that were used to effect the required posting of Notice of a Special Meeting of Council for the period January 1, 2014 to December 31, 2014 inclusive

[9] Candle Lake indicated in their submission to my office that “the minutes and the public notices as posted online and in the records. All that were available were provided to [the Applicant]. Seven notices were provided...”

[10] The Applicant advised my office that he believed special meeting notices were missing for October 10, 2014 and December 16, 2014. The Applicant also indicated that he had a special meeting notice for October 31, 2014 that differed from the copy provided in response to his access request.

[11] My office contacted Candle Lake to inquire about these questions posed by the Applicant. Candle Lake provided a copy of the October 31, 2014 special meeting notice they had in their records. Candle Lake indicated “there was no notice for the Oct [sic] 10, 2014 meeting due to the fact it had been advertised at the beginning of the year along with the regular meeting...As to the December 16 reference, there was no meeting on that date... the staff has looked through the agendas and the minutes and could not find any reference to a meeting held on December 16... .”

[12] While the Applicant claimed to have minutes related to these dates and other copies of the notices, nothing further was provided to my office regarding this claim.

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

b) Whether it was the Mayor or a majority of Council who requested the Special Meeting in each instance and the names of the Councilor if the later together with a copy of the request

[14] Candle Lake advised that “nothing in the Municipalities Act requires that a record of who requested the meeting be kept. Therefore there is no written record to attach to any of the Notices...”

[15] Access to information requests under LA FOIP are for records, not information. Candle Lake is not required to answer questions or create records to fit requests for information. They are only required to search for records that could be responsive to the request.

[16] Candle Lake claimed that they had searched their meeting minutes, as well as email, and no records meeting this description were located.

[17] Based on the information provided, it appears Candle Lake has performed a reasonable search for responsive records.

c) Where any of the Special Meetings were called with less than 24 hours notices to the Council and public, a copy of the written waive of notice signed by all members of Council and in which event the time the [sic] said waivers were signed relevant to the commencement of the Special Meeting referenced in the waiver

[18] Candle Lake’s submission indicated that “there was only one meeting in 2014 that was called without the required 24 hours notice and the waiver document was sent to [the Applicant]. Those records are kept with the minutes. The staff checked all the minutes of the special meetings.”

[19] Based on the information provided, it appears Candle Lake has performed a reasonable search for responsive records.

d) If there was any business that was conducted which was not specified in the Notice referred to above, then a copy of the unanimous consent of all members of Council identifying the “any other business...transacted.”

[20] Candle Lake’s submission provided that “there was no business other than that stated in the meeting notice. Staff checked the minutes. There were no ‘unanimous consent’ documents to provide.”

[21] Based on the information provided, it appears Candle Lake has performed a reasonable search for responsive records.

e) A copy of any bylaw passed in contemplation of s [sic] 124(2)

[22] Section 124 of *The Municipalities Act* describes the method of giving notice of a council meeting. Section 124(2) of *The Municipalities Act* provides as follows:

124(2) Notice to the public of a council meeting or council committee meeting is sufficient if the notice is posted at the municipality office or given in any other manner specified by council, by bylaw, as the means by which public notice in such cases is to be provided.

[23] Candle Lake advised in their submission that :

We have a public notice bylaw that does not contemplate public notices for meetings. I have attached a copy of the excerpt from that bylaw. The Staff did an exhaustive search of the Bylaws and retrieved the one document that does not reflect anything in the section of the Municipal Act referenced by [the Applicant] so therefore nothing was provided to him.

[24] Subsection 117(1)(a) of *The Municipalities Act* provides the following regarding obtaining copies of bylaws:

117(1) Any person is entitled at any time during regular business hours to inspect and obtain copies of:

(a) any contract approved by the council, any bylaw or resolution and any account paid by the council relating to the municipality.

[25] Candle Lake provided my office with a copy of the bylaw they located during their search. Although the bylaw does not appear to specify other manners of providing public notice, the bylaw provides circumstances in which public notice are to be provided. Candle Lake should consider releasing this bylaw to the Applicant.

[26] Based on the information provided, it appears Candle Lake has performed a reasonable search for responsive records and the bylaw identified should be provided to the Applicant.

2. Are the fees associated with this request reasonable?

[27] Candle Lake also provided an invoice to the Applicant in the amount of \$17.00. The invoice indicated that there was a \$2.00 charge for eight pages of photocopying and an additional \$15.00 charge.

[28] In reviewing the records provided to the Applicant, my office found that there were only seven pages provided to the Applicant. Candle Lake confirmed that there were only seven pages. The charge for photocopying fees should be revised to reflect the correct number of pages.

[29] Candle Lake indicated in their submission that the additional \$15.00 charge was for:

The staff spent a considerable amount of time on these requests. Bylaws had to be searched as well as the Minute book... As no estimate had been provided to [the Applicant], he was not charged the full amount of staff time required to conduct the searches. In all staff spent a minimum of 16 hours doing the research for all of [the Applicant's] requests...

[30] Subsection 5(3) of the LA FOIP Regulations provides that:

5(3) Where time in excess of one hour is spent in searching for a record requested by an applicant or in preparing it for disclosure, a fee of \$15 for each half-hour or portion of a half-hour of that excess time is payable at the time when access is given.

[31] My office requested further clarification from Candle Lake regarding the number of hours spent on this specific request and approximately how many pages of records and/or file drawers staff would have searched. Candle Lake provided:

He was charged for ½ hour in excess of the 1 hour. The requests that came in at the same time were not given an estimate...The time it took exceeded the allowed limit without an estimate... As explained earlier, the minutes were searched that would be 12 months from January to December of 2014, emails were search and the web site was searched for the records what had been posted.

[32] Candle Lake did not provide my office with the actual number of hours that were spent searching for records or the number of pages that would have been visually scanned to identify responsive records or other details of its search efforts.

[33] My office issued a Draft Review Report and provided it to Candle Lake. It indicated that my office was not provided adequate information regarding the search undertaken to determine if the fees charged to the Applicant for this request were reasonable.

[34] Candle Lake responded to the Draft Review Report providing further detail of their time spent searching for responsive records to support the fees. Candle Lake indicated that it had spent three and a half hours searching for responsive records. However, they only charged the Applicant for a half hour over the first hour of free search. Candle Lake stated it had searched through approximately 289 pages of special meeting agendas and 197 pages of special meeting minutes to identify responsive records.

[35] Candle Lake also advised my office that it had searched emails and bylaws. It indicated that this likely included hundreds of emails and it probably reviewed approximately 200 bylaws. However, Candle Lake had not recorded these details of their search strategy.

[36] When conducting a search where fees will be applied, public bodies should ensure that adequate detail is recorded to support the fees associated with the request.

[37] The *IPC Guide to Exemptions* provides that “it should take an experienced employee 1 minute to visually scan 12 pages of paper or electronic records to determine responsiveness.” Based on that calculation, the 486 pages of special meeting agendas and minutes should take approximately 40 minutes to review these pages for responsiveness.

[38] Based on the calculation above, if Candle Lake had to search through approximately 100 emails and 200 bylaws it would be reasonable to require more than the one hour of free search time.

[39] The additional half hour charged by Candle Lake to search for the records responsive to this request does not appear to be unreasonable.

IV FINDINGS

[40] I find that Candle Lake conducted a reasonable search for records.

[41] I find that Candle Lake’s fee for searching for records reasonable.

[42] I find that Candle Lake’s fee for the photocopying of records need to be amended.

V RECOMMENDATIONS

[43] I recommend that Candle Lake take no further action regarding search for records.

[44] I recommend that Candle Lake develop a procedure for access requests involving fees to record details of search to support the amount of fees charged.

[45] I recommend that Candle Lake amend the photocopying fee to \$1.75.

Dated at Regina, in the Province of Saskatchewan, this 26th day of October, 2015.

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