



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 092-2019, 124-2019

Rural Municipality of Round Valley No. 410

April 17, 2020

Summary:

The Applicant made an access to information request to the R.M. of Round Valley No. 410 (R.M.). The Applicant claimed that they did not receive a response within the legislated timeline and requested a review of the R.M.'s failure to respond pursuant to section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act*. The R.M. indicated they did not receive the original response and then responded to the Applicant indicating that records did not exist. The Applicant then requested a review of the R.M.'s response. The Commissioner found that the search efforts and response were adequate but that, going forward, the R.M. should maintain records of R.M. business.

I BACKGROUND

[1] On February 18, 2019, the Applicant made the following access to information requests pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to the Rural Municipality of Round Valley No. 410 (R.M.) for the time period of 2010 to 2011 and 2017 to 2018 involving the Suffern Lake Regional Park Authority (SLRPA):

- Clear accounting that shows the justification for the gross disparity of 14% to 71% increases in the application of 2017 taxes,
- SLRPA meeting minutes for all regular and any additional special meetings in 2017 and 2018
- whether [name] served on the board in 2010 or 2011.

[2] On, April 1, 2019 the Applicant advised my office of the R.M.'s apparent failure to respond to their access to information request within the 30 day timeframe required by LA FOIP.

[3] On April 5, 2019, my office sent correspondence to the R.M. requesting an update on the request.

[4] On April 5, 2019, the R.M. responded to the Applicant indicating that:

...the Rural Municipal of Round Valley No. 410 does not have any of this information that you requested. We only have a representative for this board and we do not receive any minutes, financial statements, or any records of who serves on the board. For this information please contact the Suffern Lake Regional Park Board.

[5] On April 24, 2019, the Applicant requested that my office review the search performed by the R.M. as well as the fact that the R.M. did not provide a response within the required timeline.

[6] On, April 25, 2019, my office notified both the Applicant and the R.M. that my office would be undertaking a review of the search conducted by the R.M and its apparent failure to respond within the required timeframe.

II RECORDS AT ISSUE

[7] As my office is reviewing the R.M.'s search efforts and apparent failure to respond with the required timeline, there are therefore no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to conduct this review?

[8] The R.M. is a "local authority" pursuant to subsection 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

2. Did the R.M. meet legislated timelines?

[9] When requesting this review from my office, the Applicant submitted that the R.M. did not provide a response to their access to information request within the 30-day timeline.

[10] Section 7 of LA FOIP provides:

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);

...

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

...

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

[11] The R.M. advised in its submission that:

...we did not receive the first email request as we have checked our records for incoming email. There was nothing there until we received your email about this situation.

[12] The email address that the Applicant sent the request for information is in fact the correct email address for the R.M. and the same one my office used to contact the R.M. The R.M. indicated that it checked all email folders and checked its spam folder and the email was not there.

[13] Once the R.M. was made aware of the outstanding request by my office, it responded to the Applicant within 19 days.

[14] I cannot determined whether the email was received or not. I do note, once notified by my office, the R.M. responded promptly.

3. Did the R.M. conduct an adequate search?

[15] Once the R.M. received specifics regarding the access requests from my office, it conducted a search for records and determined that none existed.

[16] The focus of a search review is whether or not the public body conducted a reasonable search. 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.

[17] 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 public body to prove with absolute certainty that records do not exist.

[18] When a public body receives a notification letter from my office requesting details of its search efforts, the following can be included in the public body’s submission (non-exhaustive):

- Outline the search strategy conducted:
 - 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;
- 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?

[19] The above list is meant to be a guide. Providing the above details is not a guarantee that my office will find the search conducted was reasonable. Each case will require different search strategies and details depending on the records requested.

[20] In its submission, the R.M. indicated that it searched for paper records in the file folder for SLRPA in its filing cabinet. The R.M. also indicated that it searched electronic records and emails using a number of key word searches.

[21] Upon my office reviewing the Constitution for the SLRPA, it provides:

5(d) The duties of the Secretary-Treasurer shall be as follows:

- i. The Secretary-Treasurer shall draw up and keep a records of minutes of all meetings of the Authority.

...

- v. Keep adequate and proper records which shall be open to inspection by any member of the Authority or by the Minister of Saskatchewan Environment and Resource Management or his representative on request.

[22] The responsibility for the creation and maintenance of records lies with the Secretary-Treasurer of the SLRPA, not the R.M.

[23] The R.M. is also under no obligation to create records or answer questions posed by an applicant; rather, its obligation is to determine if records responsive to the request exist. So even though it may appear that the third item requested may be an answer to a question, if records responsive exist that would include that detail, those should be identified.

[24] During my offices review and communication with the R.M., it provided further details indicating that the identified individual did not serve on the SLRPA in 2010-2011:

... the representative for the board only was appointed in November of 2018 for this board and [the individual] never attended any meetings prior to this. [The individual] was also was not on this board in 2010-2011.

[25] Given the above, I find that the R.M. has performed an adequate search for the responsive records.

4. Should the R.M. have possession or control of the records?

[26] Although the R.M. has shown a reasonable search for the records, there is still the question of whether it should have copies of any of the records requested.

[27] *The Saskatchewan Gazette, Volume 115*, specifies that:

I, Gene Makowsky, Minister of Parks, Culture and Sport, pursuant to sections 7 and 11 of *The Regional Parks Act, 2013*, being satisfied it is in the public interest to do so, hereby order:

1 The Suffern Lake Regional Park Authority, constituted pursuant to Order in Council 1294/68, is hereby amended as follows:

(a) the RM of Hillsdale No. 440, the Village of Neilburg, the Village of Marsden, and the Town of Unity are removed from the Suffern Lake Regional Park Authority;

(b) the Suffern Lake Regional Park Authority shall be comprised of the following four municipalities: the RM of Senlac No. 411, the RM of Manitou Lake No. 442, the RM of Round Valley No. 410, and the Village of Senlac. Changes to the park authority composition have the support of the participating municipalities by council resolution;

[28] The SLRPA's Constitution indicates that:

The objects of the Authority shall be as follows:

(a) To develop, maintain and administer the Suffern Lake Regional Park in accordance with the needs and interests of the participating municipalities and of residents of Suffern Lake Regional Park and surrounding districts as they may be from time to time.

[29] It is clear that the members of the SLRPA, which are members of R.M.s, have the responsibility to participate on the SLRPA as a business obligation for the R.M. They are representing the needs and interests of their R.M. as well as those of park residents and surrounding districts. Although the responsibility lies with the Administrator of the SLRPA to create and maintain adequate records, best practice would indicate that, while doing R.M. business, the R.M. should also be keeping adequate records of any discussions or decisions that involves its members or interests. I recommend, going forward, the R.M. maintain adequate records of all R.M. business.

IV FINDINGS

[30] I cannot determine whether the R.M. received the original access request or not.

[31] I find that the R.M. has performed an adequate search.

V RECOMMENDATION

[32] I recommend that, going forward, the R.M. maintain adequate records of R.M. business.

Dated at Regina, in the Province of Saskatchewan, this 17th day of April, 2020.

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