



REVIEW REPORT 097-2017

Rural Municipality of Manitou Lake #442

August 25, 2017

Summary:

The Applicant was dissatisfied with the Rural Municipality of Manitou Lake #442's (RM) response to his three-part access to information request under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Applicant appealed to the Information and Privacy Commissioner (IPC). The IPC found that the RM properly withheld a record pursuant to subsection 28(1) of LA FOIP. Further, he found that the RM provided sufficient evidence that no records exist regarding the second and third part of the Applicant's access to information request.

I BACKGROUND

[1] On March 14, 2017, the Rural Municipality of Manitou Lake #442 (RM) received the following access to information request:

1. [Name of council member]'s letter of resignation
2. Contract with High Hill's Cattle Corp. To work for R.M. of Mantou [sic] Lake #442
3. Last tender for fence building project

[2] In a letter dated April 19, 2017, the RM responded as follows:

The RM of Manitou Lake No 442 will not be able to provide this information you have requested in accordance with the following:

1. [Name of council member] Resignation Letter: Under *The Local Authority Freedom of Information and Protection of Privacy Act* section 23 resignation letters are considered personal information. Therefore cannot be disclosed.
2. Tender documents regarding fencing: This record does not exist.

3. Contract with High Hills Cattle: This record does not exist.

[3] On April 24, 2017, my office received a request for review from the Applicant.

[4] On May 18, 2017, my office notified both the RM and the Applicant that it would be undertaking a review.

II RECORDS AT ISSUE

[5] The record at issue is the former council member's resignation letter.

III DISCUSSION OF THE ISSUES

[6] The RM is a "local authority" as defined by subsection 2(f) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

1. Did the RM properly withhold the council member's resignation letter pursuant to subsection 28(1) of LA FOIP?

[7] Subsection 28(1) of LA FOIP provides as follows:

28(1) No local authority shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 29.

[8] In order for subsection 28(1) of LA FOIP to apply, the information in the record must first qualify as "personal information" as defined by subsection 23(1) of LA FOIP. I note that subsection 23(1)(b) of LA FOIP describes "personal information" as the employment history of an individual. Subsection 23(1)(b) provides:

23(1) Subject to subsections (1.1) and (2), "personal information" means personal information about an identifiable individual that is recorded in any form, and includes:

...

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

[9] Employment history is the type of information normally found in a personnel file, including reasons for leaving a job. Based on a review of the resignation letter, I find that the letter contains the reason for why the council member resigned from his position. As such, I find that such information qualifies as “personal information” as defined by subsection 23(1) of LA FOIP. Therefore, I find that the RM properly withheld this information pursuant to subsection 28(1) of LA FOIP.

2. Did the RM provide sufficient evidence that no contract exists between it and High Hills?

[10] When responding to an access to information request under LA FOIP, local authorities must provide a written notice to the Applicant pursuant to subsection 7(2) of LA FOIP. Subsection 7(2)(e) of LA FOIP provides that a local authority may refuse the Applicant access for the reason that the record does not exist. Subsection 7(2) provides:

7(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 Applicant requested a copy of the contract between the RM and High Hills. In its letter dated April 28, 2017 to the Applicant, the RM indicated that a contract with High Hill’s did not exist.

[12] The basis for the Applicant’s belief that a contract exists is because he had obtained a copy of a record that shows a list of accounts approved for payment. That record shows that High Hills had been approved for payment. The payment amount is \$8,946.00.

[13] In its submission to my office, the RM explained that no contract exists because of two reasons: 1) the New West Partnership Trade Agreement (NWPTA), and 2) because council made a decision that a contract is not required.

[14] First, according to the NWPTA, those who are a part of the municipalities, school boards, and the health sector (MASH sector) will be required to provide open access to their procurements when the value of those procurements meets or exceeds \$75,000 for goods or services, and \$200,000 for construction. Therefore, the RM only establishes contracts when the procurement thresholds are met or exceeded.

[15] Second, the RM determined it did not need to have a contract. It explained that the RM made a decision to hire High Hills as the municipal foreman by passing a motion in a council meeting. The RM provided my office with council meeting minutes dated February 19, 2015 that documented the passing of motion 15/083. The meeting minute reads as follows:

Municipal Foreman 15/083

WRIGHT: That the RM of Manitou hire High Hills Cattle, James Czerniak as Municipal Foreman at an hourly rate of \$44.00, beginning February 1, 2015 cell allowance of \$50.00 per month, use of Municipal truck for all Municipal purposes, and to travel between work and home.

Carried

[16] The RM explained that the duties and responsibilities of the municipal foreman are outlined in policies.

[17] Based on the above, I am satisfied that a contract between High Hills and the RM does not exist.

3. Did the RM provide sufficient evidence that no tender documents exist for a fence building project?

[18] The Applicant had also requested the last tender for a fence building project. The RM responded by stating that no records exist.

[19] In its submission, the RM indicated that fencing is considered a small service job in that it does not meet the procurement thresholds in the NWPTA. Therefore, it does not engage in a tendering process. To support its claim that fencing is a small service job that does not meet or exceed the procurement threshold of the NWPTA, it provided my office with a copy of an invoice dated June 1, 2016 from a vendor named Prairie Dog that totaled \$4824.75.

[20] Based on the above, I am satisfied that tender documents for a fence building project do not exist.

IV FINDINGS

[21] I find that the RM properly withheld this information pursuant to subsection 28(1) of LA FOIP.

[22] I find that the RM provided sufficient evidence that no contract exists between it and High Hills.

[23] I find that the RM provided sufficient evidence that no tender documents exists for a fence building project.

V RECOMMENDATION

[24] I recommend that the RM take no further action.

Dated at Regina, in the Province of Saskatchewan, this 25th day of August, 2017.

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