



REVIEW REPORT 098-2016

Northern Village of Pinehouse

June 3, 2016

Summary:

The Northern Village of Pinehouse provided the Applicant with records responsive to her request after she paid \$270.75 in fees. The Applicant requested a review by the Commissioner because she was dissatisfied for three reasons: 1) the amount of fees, 2) the Village did not respond to part of her request and 3) the extension of time. The Commissioner requested that the Village provide a submission for the purpose of the review. It did not do so. The Commissioner found that \$30.75 was a reasonable fee. He also recommended that the Village provide a section 7 response to the Applicant in accordance with *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

I BACKGROUND

[1] On November 30, 2015, the Northern Village of Pinehouse received an access to information request for the following:

In the Village's audited financial statement for 2011, it indicates that [a Village Councilor] received \$74,205 in remuneration. The Village's audited financial statement for 2012 indicated he received \$31,325. I am requesting copies of any and all remuneration logs, time vouchers and expense claims submitted in support of that remuneration, as well as copies of the Village Council minutes approving payment of that remuneration.

[2] On December 18, 2015, the Village responded to the Applicant, indicating that its response time would be extended by a 30 day period pursuant to section 12 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

- [3] On January 21, 2016, the Village responded to the Applicant indicating that access to certain records would be granted upon the payment of a fee of \$270.75. On February 5, 2016, the Applicant clarified her request with the Village. On March 7, 2016, the Village again indicated that a fee of \$270.75 applied to the record and provided more detail about the fee.
- [4] The Applicant paid the fee and on March 22, 2015, the Village provided certain records to her.
- [5] On April 26, 2016, the Applicant requested a review by my office. She was dissatisfied as the Village had not provided records to part of her request. She also requested a review of the fees charged and the time extension.
- [6] On April 27, 2016, my office provided notification to both the Village and the Applicant of our intention to undertake a review. We requested that the Village provide a submission by May 11, 2016.

II RECORDS AT ISSUE

- [7] The Applicant maintains that the Village did not address part of her access request.

III DISCUSSION OF THE ISSUES

1. Did the Village's extension of the response deadline satisfy the criteria set out in subsection 12(1)(c) of LA FOIP?

- [8] Subsection 7(2) of LA FOIP requires local authorities to respond to access to information requests within 30 days after the request is made. Subsection 7(2) provides:

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

[9] Subsection 12(1) of LA FOIP enables local authorities to extend the 30 days prescribed in subsection 7(2) for a reasonable period not exceeding 30 days. However, pursuant to subsection 12(2) of LA FOIP, the local authority must provide notification to the Applicant that it will be relying on subsection 12(1) within the first 30 day period. Section 12 of LA FOIP provides:

12(1) The head of a local authority may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:

(a) where:

(i) the application is for access to a large number of records or necessitates a search through a large number of records; or

(ii) there is a large number of requests;

and completing the work within the original period would unreasonably interfere with the operations of the local authority;

(b) where consultations that are necessary to comply with the application cannot reasonably be completed within the original period; or

(c) where a third party notice is required to be given pursuant to subsection 33(1).

(2) A head who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within 30 days after the application is made.

(3) Within the period of extension, the head shall give written notice to the applicant in accordance with section 7.

[10] The Applicant's request for review indicated that she made her access request to the Village on November 30, 2015. The copy of the access to information request that she provided to my office reflects this date.

[11] On December 18, 2015, the Village sent the Applicant a letter indicating that it would extend the deadline by 30 days "on the basis that third party notice is required to be given pursuant to section 33(1)" of LA FOIP. Subsection 12(1)(c) of LA FOIP allows a local authority to extend the deadline of responding to an access request if it is required to give third party notice. Subsection 33(1) of LA FOIP states:

33(1) Where a head intends to give access to a record that the head has reason to believe may contain:

(a) information described in subsection 18(1) that affects the interest of a third party; or

(b) personal information that may be disclosed pursuant to clause 28(2)(n) and that relates to a third party;

and, in the opinion of the head, the third party can reasonably be located, the head shall give written notice to the third party in accordance with subsection (2).

[12] The Applicant's submission to my office stated that:

The sole rationale for the delay in its initial response must therefore be attributed to the "third party" notice the Village claimed to be a requirement under LA FOIP. It would therefore be worthwhile to have the Information and Privacy Commissioner rule on whether a member of Village Council is to be considered a "third party" under LA FOIP Act. It is very difficult, for a layman at least, to see how the Act could be construed in this way.

[13] I note that subsection 33(1) of LA FOIP requires a local authority to give this notice if the information is subject to third party business exemptions under section 18 of LA FOIP. However, it also requires a third party to give this notification if the responsive records constitute personal information and the local authority intends to disclose if it is in the public interest or would benefit the subject individual.

[14] The Village did not provide my office with a submission explaining its choice to extend the timeline pursuant to subsection 12(1)(c) of LA FOIP. As such, I find that the Ministry's extension of 30 days was not in accordance with subsection 12(1)(c) of LA FOIP.

2. Did the Village refuse to give access to certain records?

[15] Section 5 of LA FOIP provides the right of access as follows:

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.

[16] Section 5 is clear that access can be granted provided the records are in the possession or under the control of the local authority. Sections 7, 8, 9, 10, 11 and 12 of LA FOIP explain how a local authority must respond to an access to information request. My office has said in the past that a local authority has an implicit duty to assist an applicant. In other words, it should make every reasonable effort to respond to each applicant openly, accurately and completely.

[17] As noted above, the Applicant requested both financial records associated with the remuneration of a council member as well as the council minutes approving the remuneration. Council minutes were not included in the records that the Village provided to the Applicant. Additionally, the Village did not address the minutes in any of its correspondence with the Applicant.

[18] Section 7(5) of LA FOIP states:

7(5) A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.

[19] As such, the Village has refused to give access to the portion of the Applicant's request for minutes of the Village Council.

[20] When my office provided notification of this review to the Village, we asked that it address its refusal to provide these records. My office also noted that subsection 117(1)(d) of *The Municipalities Act* gives any person the right to obtain copies of council minutes. The Village did not respond to my office's request.

3. Were the fees applied by the Village reasonable?

[21] Subsection 9(1) of LA FOIP states:

9(1) An applicant who is given notice pursuant to clause 7(2)(a) is entitled to obtain access to the record on payment of the prescribed fee.

[22] Subsections 5(2) and 5(3) of the LA FOIP Regulations provide a local authority the ability to recover costs associated with searching for responsive records. In past reports, my office has established that there are three kinds of fees that a public body can include in its fee estimate:

- fees for searching for a responsive record;
- fees for preparing the record for disclosure; and
- fees for the reproduction of records.

[23] My office asked the Village to provide a submission explaining its application of the fees. The Village did not provide a submission to my office. However, the Village did provide the Applicant with a description of the fees in its letter dated March 7, 2016. The Applicant provided a copy to my office.

[24] In this letter, the Village indicated that there were 123 pages of responsive records and the Village was charging \$30.75 for reproduction costs. Subsection 5(2)(a) of the LA FOIP Regulations allows a local authority to charge \$0.25 a page for photocopying. Therefore, I find the copying fee to be reasonable.

[25] However, the letter also indicated that it took nine hours to search for the record. Subsection 5(4) of the LA FOIP Regulations allows a local authority to charge \$15 per half hour for searching for the record, after the first hour of search time. Therefore, the Village indicated that the Applicant would need to pay \$240 for search time.

[26] However, the Village was required to provide the estimates once the fees would surpass \$50. It did nine hours of work on the request and identified all responsive records before providing the fee estimate. I recommend that public bodies take the approach that fee estimates occur early in the process. Some initial work will be required in order to make a determination that a fee estimate is warranted. However, completing the entire search before the Applicant has agreed to pay fees or has had an opportunity to narrow the request is a potential waste of time. Any work searching for records that a local authority does before an Applicant agrees to pay fees is done at the risk of the local authority as an

Applicant may or may not agree to pay the fees. The recommended steps for processing an access to request when charging fees are as follows:

1. Clarify or narrow request with Applicant.
2. Make a search plan (non-compensable).
3. Based on search plan, prepare a fee estimate (do not complete the search).
4. Decide whether charging a fee (consistent with the policy of the public body).
5. Send out fee estimate and suspend work.
6. If Applicant initiates, clarify or narrow request with Applicant.
7. When Applicant pays deposit, start search.

[27] Therefore, it is not reasonable to charge the Applicant fees for work completed before she agreed to the fees and paid the deposit. I find that the fees that the Village charged for searching for the responsive record to be unreasonable.

IV FINDINGS

[28] I find that the Ministry's extension of 30 days was not in accordance with subsection 12(1)(c) of LA FOIP.

[29] I find that the Village refused to provide the Applicant access to minutes of its council meetings.

[30] I find that reasonable fees would total \$30.75.

V RECOMMENDATIONS

[31] I recommend that the Village examine its process for responding to access to information requests and look for ways to improve response times.

[32] I recommend that the Village release the minutes responsive to the request to the Applicant.

[33] I recommend that the Village refund the Applicant \$240.

Dated at Regina, in the Province of Saskatchewan, this 3rd day of June, 2016.

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