



## **REVIEW REPORT 104-2018**

### **Northern Village of Pinehouse**

**September 13, 2018**

#### **Summary:**

The Applicant submitted an access to information request to the Northern Village of Pinehouse (Village). After waiting two months and receiving no response, the Applicant made a request for review to the Information and Privacy Commissioner (Commissioner). After receiving no response to telephone calls and emails, the Commissioner proceeded to draft a review report and shared it with the Village. At that point, the Village released some records responsive to the access to information request. However, after attempts to correspond with the Village over the remaining records resulted in no response, the Commissioner issued the final report finding the Village was deemed to have refused access to the remaining records. Further, the Commissioner found that the Village had not identified any exemptions under *The Local Authority Freedom of Information and Protection of Privacy Act* that it could rely on to withhold all or part of the records. The Commissioner recommended the remaining records be released in full to the Applicant.

#### **I BACKGROUND**

[1] On April 24, 2018, the Applicant sent an access to information request to the Northern Village of Pinehouse (the Village) via Canada Post. Tracking information indicated that the Village received the package on April 27, 2018. The access to information request stated:

At least two mortgages were issued by the Northern Village of Pinehouse in 2013 to [name removed] (registered 23 Sept 2013) and to [name removed] (registered 8 Oct 2013), both in the amount of \$26,000, interest free. I wish to obtain:

- (1) copies of these mortgages, and any other such mortgages issued to private individuals, signed by Village officials in 2013-2014;
  - (2) copies of the Village Council minutes at which these mortgages to private individuals were approved; and
  - (3) copies of any and all authorizations by the Saskatchewan Municipal Board for these mortgage transactions.
- [2] On June 7, 2018, my office received a request for review from the Applicant. The Applicant indicated he had not received a response from the Village to the access to information request he had submitted 43 days earlier. On the same day, my office attempted to contact the Village via email. The email requested the Village Administrator contact my office to discuss when the response would be provided.
- [3] On June 11, 2018, my office attempted to contact the Village via telephone. A message was left but no call was received back.
- [4] On June 13, 2018, my office notified the Village and the Applicant of my office's intent to undertake a review. In the notification to the Village, my office requested the Village provide a response to the Applicant's access to information request by June 20, 2018. Further, it requested a submission by June 27, 2018, explaining why the Village had not responded within the legislated timelines pursuant to section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). As of the date of this report, the Village has not provided a complete response to the Applicant and my office has not received a submission.

## **II RECORDS AT ISSUE**

- [5] It is unclear what the responsive records are, as the Village has not fully responded to the access to information request or to my office. It appears the Village has not accounted for responsive records in its possession and/or control.

### **III DISCUSSION OF THE ISSUES**

#### **1. Does the Commissioner have jurisdiction?**

[6] The Village is a local authority pursuant to subsection 2(f)(i) of LA FOIP. Thus, I have jurisdiction to conduct this review.

#### **2. Did the Village comply with section 7 of LA FOIP?**

[7] Section 5 of LA FOIP states that an individual has a right to access records in the possession or under the control of a local authority, if an access to information request is made:

**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.

[8] The Applicant utilized this right when he made an access to information request to the Village on April 24, 2018.

[9] Section 7 of LA FOIP instructs a local authority on what to do if it receives an access to information request:

**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); or

(b) transfer the application to another local authority or to a government institution in accordance with section 11.

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

(a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;

(b) if the record requested is published, referring the applicant to the publication;

(c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;

(d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;

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

(f) stating that confirmation or denial of the existence of the record is refused pursuant to subsection (4); or

(g) stating that the request has been disregarded pursuant to section 45.1, and setting out the reason for which the request was disregarded.

(4) A notice given pursuant to subsection (2) is to state that the applicant may request a review by the commissioner within one year after the notice is given.

(4) If an application is made with respect to a record that is exempt from access pursuant to section 15, 16, 21, or 22 or subsection 29(1), the head may refuse to confirm or deny that the record exists or ever did exist.

(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.

[10] Pursuant to subsection 7(5) of LA FOIP, the Village failed to provide a section 7 response to the Applicant within the 30-day timeline. Therefore, it is deemed to have responded on the 30<sup>th</sup> day with a refusal to provide access. My office refers to this as a deemed refusal.

[11] The Village is now required to account for responsive records in its possession and/or control and only deny access to all or part of the records if permitted by the limited and specific exemptions in Part III of LA FOIP. However, the Village has not done this. To date, the Village has not identified any exemptions in Part III of LA FOIP that it can rely on to withhold all or part of the records.

[12] It is the position of my office that information delayed is information denied. One of the major problems with access to information regimes across Canada is delay in providing applicants with access to public records. The time limit set out in LA FOIP is 30 days from

the date the local authority receives the access to information request. There is a provision in limited circumstances for extending that 30-day period an additional 30 days but that requires notification to the Applicant of the extension within the first 30 days after the request is received. It has now been well over four months since the Applicant made his request to the Village.

[13] Despite efforts by my office to connect with the Village, it has not responded to emails and telephone messages. There appears to be a complete disregard by the Village for what LA FOIP requires of it. The purpose of LA FOIP is to enhance transparency and accountability within local government by providing citizens with the right of access and the right of privacy over their personal information.

[14] Between 2013 and 2018, my office issued 11 Review Reports involving the Village.<sup>1</sup> Nine of those reports dealt with section 7 responses not being provided, delays in providing it or the responses being inadequate. In addition, the Village did not cooperate with requests by my office in those nine cases. In one report, former Commissioner Gary Dickson, Q.C. recommended that the Minister of Justice and Attorney General consider prosecution pursuant to subsection 56(3) of LA FOIP because the Village did not comply with a lawful requirement of the Commissioner.<sup>2</sup> The prosecution did not proceed because the Village did what the Commissioner requested after the issuing of the public report.

[15] Following the issuing of nine Review Reports in 2016 dealing with the same issues,<sup>3</sup> I sent letters to the Deputy Minister of Government Relations and the Chief Executive Officer for the Saskatchewan Urban Municipalities Association. The letters requested assistance for the Village in understanding its obligations under LA FOIP. Following the issuing of this report, I will send those letters again.

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<sup>1</sup> Saskatchewan OIPC Review Reports LA-2013-004, 141-2015, 036-2016, 037-2016, 039-2016, 040-2016, 056-2016, 098-2016, 106-2016, 110-2016 and 171-2016.

<sup>2</sup> Saskatchewan OIPC Review Report LA-2013-004 at [40].

<sup>3</sup> For reference to these letters being sent, see paragraphs [8] and [9] of Review Report 171-2016.

[16] Finally, if the Village continues the pattern of no cooperation with my office in 2018, I will consider recommending again that the Attorney General consider a prosecution under subsection 56(3) of LA FOIP.

[17] My office shared its preliminary analysis with the Village which included the above analysis. After receiving it, the Village sent an email to my office and the Applicant on August 14, 2018. The email had a portion of the responsive records attached. Specifically, it provided copies of mortgages the Village had issued. In its email, the Village stated:

Here are the 9 mortgages currently registered between homeowners and our organization for the years 2013-2014. We requested these documents and as of today they are now in our possession as well as yours.

[18] It is not clear where the Village needed to retrieve these records from. It is also not clear where the remaining responsive records are. The Village has not provided copies of the Village minutes at which the mortgages were approved or copies of the authorizations by the Saskatchewan Municipal Board for the mortgage transactions. The Applicant's access to information request also requested these documents.

[19] In response to the release of the mortgages, the Applicant advised my office that the remaining records he requested were important because of the possibility of a conflict of interest. According to the Applicant, the Mayor's common-law wife received a mortgage from the Village. Further, the Mayor's common-law wife is also the Village Administrator's mother. In addition, the Applicant asserted that the Mayor's son and half-brother also received mortgages. Finally, the Village Administrator also received a mortgage. The Applicant wishes to confirm that the mortgages issued by the Village administration were approved in Council and that the Mayor and Village Administrator recused themselves from the debate and vote in council.

[20] I agree with the Applicant that in such a situation, it is extremely important that due process took place and was appropriately documented. If the mortgages were properly issued with no conflict of interest, it is not clear why the Village would not want to demonstrate that by providing the council meeting minutes and authorizations requested by the Applicant.

[21] Subsection 111(2)(a) of *The Municipalities Act* provides that the Administrator shall ensure that all minutes of council meetings are recorded. Further, subsection 116(2)(b) provides that minutes must be preserved permanently. Finally, subsection 117(1)(d) provides that any person is entitled at any time during regular business hours to inspect the minutes of council after they have been approved by council.

#### **IV FINDINGS**

[22] I find that the Village is deemed to have refused access to the remaining records as a result of failing to provide a section 7 response to the Applicant.

[23] I find that the Village has not identified any exemptions in Part III of LA FOIP that it can rely on to withhold the remaining records.

#### **V RECOMMENDATION**

[24] I recommend the Village release the remaining records to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 13<sup>th</sup> day of September 2018.

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