



REVIEW REPORT 110-2016

Northern Village of Pinehouse

June 10, 2016

Summary:

The Northern Village of Pinehouse applied subsection 17(1)(f) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to records responsive to the Applicant's access to information request. The Commissioner asked the Village to provide a submission to his office for the purpose of this review. It did not do so. The Commissioner found that the Village did not properly apply subsection 17(1)(f) of LA FOIP to the record and recommended release. He also found that the Village did not reply within legislated timelines.

I BACKGROUND

- [1] On February 17, 2016, the Northern Village of Pinehouse received an access to information request for "Pinehouse Business North Development Inc. AND Pinehouse Business North Limited Partnership audited financial statements for 2013 and 2014; and quarterly reports for 2015."
- [2] On March 24, 2016, the Village provided a response to the Applicant indicating that the responsive records were being withheld pursuant to subsection 17(1)(f) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] On May 17, 2016, the Applicant requested a review from my office. On the same day, my office provided notification to both the Applicant and the Village of our intention to undertake the review. We asked that the Village provide a submission on the issues to my office by May 31, 2016.

II RECORDS AT ISSUE

[4] The Village has not provided a copy of the responsive records or a submission in support of the application of subsection 17(1)(f) of LA FOIP to my office.

III DISCUSSION OF THE ISSUES

1. Did the Village properly apply subsection 17(1)(f) of LA FOIP to the record?

[5] Subsection 17(1)(f) of LA FOIP states:

17(1) Subject to subsection (3), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(f) information, the disclosure of which could reasonably be expected to prejudice the economic interest of the local authority;

[6] Prejudice in this context refers to detriment to economic interests. The test for prejudice is not as demanding as the test for harm.

[7] Economic interest refers to both the broad interests of a public body and for the government as a whole, in managing the production, distribution and consumption of goods and services. The term also covers financial matters such as the management of assets and liabilities by a public body and the public body's ability to protect its own or the government's interests in financial transactions.

[8] For this provision to apply there must be objective grounds for believing that disclosing the information would result in prejudice. The public body does not have to prove that

prejudice is probable, but needs to show that there is a “reasonable expectation” of prejudice if any of the information were to be released. The following criteria are used:

1. There must be a clear cause and effect relationship between the disclosure and the prejudice which is alleged;
2. The prejudice caused by the disclosure must be more than trivial or inconsequential; and
3. The likelihood of prejudice must be genuine and conceivable.

[9] Since 1992 and 1993, respectively, government institutions and local authorities have been providing my office with documents over which they claim an exemption. Our office reviews those documents and the submissions of the public body, writes a report and current practice is, that after the review, the responsive record is destroyed by my office. During a review it is up to the public body to make its case to persuade the Commissioner that the exemption applies.

[10] In the absence of the record or a submission from the Village, it is impossible for me to find that subsection 17(1)(f) of LA FOIP applies to the record. Therefore, I have no choice but to find that the Village did not appropriately apply subsection 17(1)(f) to the record.

2. Did the Village respond to the Applicant within the legislated timelines?

[11] 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:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

[12] 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.

[13] The Village's response to the Applicant indicates that it received her request on February 17, 2016. This response was dated March 24, 2016. The Village did not provide my office with a submission on this issue.

[14] Based on the information provided, it took the Village 38 days to respond to this access to information request. The Village's response time to the access request exceeded the legislated timelines.

IV FINDINGS

- [15] In the absence of the record or a submission from the Village, I find that it did not properly apply subsection 17(1)(f) of LA FOIP to the record.
- [16] I find that the Village did not respond to the access to information request within the legislated timelines.

V RECOMMENDATIONS

- [17] I recommend the Village release the responsive records to the Applicant.
- [18] I recommend that the Village examine its process for responding to access to information requests and look for ways to improve response times.
- [19] I recommend that the Village develop a policy that, when a review is conducted by my office, it provides my office with a copy of the responsive record and a submission giving the reasons why it is claiming any exemptions.

Dated at Regina, in the Province of Saskatchewan, this 10th day of June, 2016.

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