



REVIEW REPORT 116-2015

Rural Municipality of McKillop

September 4, 2015

Summary: The Applicant requested records from the Rural Municipality of McKillop (RM). The RM responded to the Applicant denying access because no responsive records existed. Upon review, the Commissioner found that the RM had conducted a reasonable search for responsive records.

I BACKGROUND

[1] On May 11, 2015, the Rural Municipality of McKillop (RM) received an access to information request from the Applicant for:

Notification from Community Planning detailing prioritized list of items to complete as supplied by Community Planning without interpretations, around March 16/15.

[2] The RM responded to the request by a letter dated May 26, 2015 indicating that access to the requested information was denied as the information did not exist. The RM cited subsection 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] On June 11, 2015, my office received a Request for Review form the Applicant.

[4] On June 18, 2015 my office notified the RM and the Applicant of our intention to undertake a review. A submission was received from the RM on July 6, 2015. A submission was received from the Applicant on June 26, 2015.

II RECORDS AT ISSUE

[5] The RM has asserted that no responsive records exist within its possession and/or control. Therefore, the focus of this review is on the search efforts conducted by the RM.

III DISCUSSION OF THE ISSUES

[6] The RM is a “local authority” pursuant to subsection 2(f)(i) of LA FOIP.

1. Did the RM conduct an adequate search?

[7] 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.

[8] Section 5 is clear that access can be granted provided the records are in the possession or under the control of the local authority. LA FOIP does not require a local authority to prove with absolute certainty that records do not exist. It must however, demonstrate that it has made a reasonable effort to identify and locate responsive records.

[9] A *reasonable search* is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request. 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.

[10] When providing details of search efforts to my office, generally, the details can include (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.
- Explain how records that may be in the possession of a third party but in the public body’s control have been searched such as a contractor or information service provider. For more on this, see the OIPC resource, *A Contractor’s Guide to Access and Privacy in Saskatchewan* available on our website.
- Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
- 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?
- Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see the OIPC resource, *Using Affidavits in a Review with the IPC* available on our website.

[11] The above list is a guide. Each case will require different search strategies and details depending on the records requested.

[12] In its submission, the RM clarified that the Applicant made his formal request after he had a conversation with the RM Administrator about the requirements that must be met in order to obtain approval of a subdivision application. The Applicant was concerned because a motion to approve second reading of an amendment to the RM’s zoning bylaw had been rescinded at the March 26, 2015 meeting of Council, and the zoning amendment was one of the items required for his subdivision application to ultimately be approved by the Community Planning Branch of the Ministry of Government Relations. The RM Administrator advised him that she had spoken with an official in Community Planning and had been informed that the items listed in section 11 of *The Subdivision Regulations* must be completed in the order in which they are listed in that section, so that approval of the zoning change was premature. As the RM understands it, the Applicant’s reference to the “prioritized list of items” in his request is reference to the information provided to the RM Administrator in this regard. The RM Administrator obtained this information in the course of a telephone conversation and there was no record created from this conversation. The RM provided a copy of the itemized list outlined in section 11 of *The Subdivision Regulations*.

- [13] An RM employee conducted a search of all emails received by the RM. The RM employee is responsible for managing the general email address for the RM so would be familiar with this system and the records contained within it. The RM employee searched all emails but found nothing. The key words searched included “Community Planning”, “subdivision”, “Vesna Bay” and the Applicant’s last name as he had made a subdivision application.
- [14] The RM also asserted that it maintains a paper file relating to each subdivision application. These are filed alphabetically by the name of the subdivision. Any communication received in hard copy is placed on this file. Every electronic document relating to a subdivision application is printed and placed on this file. The file related to Vesna Bay was searched page by page dating back to January 1, 2015. No responsive records were found.
- [15] My office reviewed the Applicant’s submissions. He provided copies of what appears to be email correspondence between himself and the RM. However, there was nothing contained in the correspondence that would suggest that the record he seeks exists. In fact, the email correspondence supports what the RM has indicated in its submission to my office.
- [16] In conclusion, I find that the RM has detailed its search efforts and outlined the reasons why the records do not exist. The threshold that must be met is one of “reasonableness”. Based on what has been provided to my office, I find that the RM has demonstrated that its search for records responsive to the Applicant’s access to information request was reasonable and adequate for purposes of LA FOIP.

IV FINDINGS

- [17] I find that the RM has demonstrated that its search for records responsive to the Applicant’s access to information request was reasonable and adequate for purposes of LA FOIP.

V RECOMMENDATIONS

[18] There are no recommendations to be made at this time as I am satisfied with the efforts made by the RM in this circumstance.

Dated at Regina, in the Province of Saskatchewan, this 4th day of September, 2015.

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