



## **REVIEW REPORT 128-2015**

### **Resort Village of Candle Lake**

**December 14, 2015**

**Summary:** The Resort Village of Candle Lake (RVCL) received an access to information request from the Applicant. RVCL applied subsection 15(1)(b)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to deny access to the record. The Commissioner found that subsection 15(1)(b)(i) of LA FOIP did not apply to the record. The Commissioner recommended that RVCL release the record to the Applicant.

#### **I BACKGROUND**

- [1] In January 2015, the Resort Village of Candle Lake (RVCL) received an access to information request from the Applicant.
- [2] In a letter dated June 15, 2015, RVCL refused access to the responsive records relying on subsection 15(1)(b)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [3] On June 25, 2015, my office received a request for review from the Applicant for “the November 2014 Candle Lake Capacity Study by Urban Systems.”
- [4] On June 25, 2015, my office notified the Applicant and RVCL of the review. My office requested RVCL provide the records, index of records and submission to support its application of subsection 15(1)(b)(i) of LA FOIP to deny access to records.

[5] RVCL indicated to my office that a November version of the Report as requested by the Applicant did not exist, but that a September version discussed at a December 2014 Special Meeting did exist. RVCL provide my office with a screenshot of the file management system showing the different draft versions to support this assertion. RVCL provided my office with a copy of the September 2014 version of the Capacity Study as the responsive record.

## II RECORDS AT ISSUE

[6] The record at issue is a 41 page Environmental and Carrying Capacity Study dated September 2014.

## III DISCUSSION OF THE ISSUES

[7] RVCL qualifies as a “local authority” pursuant to subsection 2(f)(i) of LA FOIP.

### 1. Does subsection 15(1)(b)(i) of LA FOIP apply to the records?

[8] Subsection 15(1)(b)(i) of LA FOIP states:

**15(1)** A head may refuse to give access to a record that:

...

(b) discloses agendas or the substance of deliberations of meetings of a local authority if:

(i) an Act authorizes holding the meetings in the absence of the public;

[9] RVCL stated in their July 27, 2015 response to the Applicant and in an email to our office dated August 5, 2015 that subsection 120(2)(b) of *The Municipalities Act* (MA) provided authority to hold meetings closed to the public.

[10] Subsection 120(2)(b) of the MA states:

**120(2)** Councils and council committees may close all or part of their meetings to the public if the matter to be discussed:

...

(b) concerns long-range or strategic planning.

[11] RVCL explained in their submission that the requested record was a “document meant to guide the future planning around development.”

[12] RVCL did post the final version of this report to its website; however, the Applicant is requesting an earlier version of this report.

[13] The IPC Guide to Exemptions provides the following test for the application of 15(1)(b)(i) of LA FOIP:

This provision is intended to enable the local authority to freely and privately debate contentious issues.

The following test must be met:

1. A meeting of council, board, commission or other body or a committee of one of them has taken place; and
2. That a statute authorized the holding of the meeting in the absence of the public; and

The question to ask is whether the purpose of the meeting was to deal with the specific subject matter described in the statute authorizing the holding of a closed meeting.

3. That disclosure of the record at issue would reveal the actual substance of the deliberations of the meeting.

*A deliberation* is a discussion or consideration of the reasons for and against an action. It refers to discussions conducted with a view towards making a decision.

*Substance* generally means more than just the subject or basis of the meeting. Rather, it is the essential or material part of the deliberations themselves.

A local authority seeking to rely on this exemption must establish that the local authority’s meeting in question was a properly constituted in camera meeting.

Further, provide information concerning when the in camera meeting was held and details of the subject matter or substance of the deliberations of the meeting.

- [14] Subsection 12(3)(b) of the British Columbia *Freedom of Information and Protection of Privacy Act* is similar to subsection 15(1)(b)(i) of Saskatchewan's LA FOIP. The British Columbia subsection 12(3)(b) provides as follows:

12(3) The head of a local public body may refuse to disclose to an applicant information that would reveal

...

(b) the substance of deliberations of a meeting of its elected officials or of its governing body, if an Act or a regulations under this Act authorizes the holding of that meeting in the absence of the public.

- [15] British Columbia's Information and Privacy Commissioner's (OIPC) Order F15-56 provides as follows regarding substance of deliberations:

[37] ...Order 03-22 determined that s. 12(3)(b) applied to both versions because it was possible to infer from them the substance council's [sic] deliberations.

[38] The City submits that unlike in Order 325-1999, the Report in this case is integral to Council's deliberations, whereas the purpose of the firefighting report was only to "stimulate" discussion to provide council with general information. The City submits that the reasoning in Order 03-22 is more applicable to this case than the reasoning in Order 325-1999...

[39] In this case, I must decide whether the contents of the Report and Letters would reveal either directly or by inference, the substance of council's deliberations. The Report contains a recommendation, and the evidence is that council considered the Report and made the decision based on the Report. The City submits that the Report was "essential" to council's deliberations. While I cannot disclose the contents of the Report without revealing withheld information, I find that all of the information in the Report is entirely and directly related to the matter before council for decision, and that it contains specific details directly tied to the recommendation. I also find that the portions of the Letters he does not already have reveals the contents of the report. For these reasons, I am satisfied that in this case, the City is entitled to withhold the Report and the Letters because disclosing either would allow someone to accurately infer the substance of council's deliberations.

- [16] Based on this, it would be reasonable to revise part three of this test to provide as follows:

3. That disclosure of the record at issue would reveal the actual substance of the deliberations **or would permit the drawing of accurate inferences with respect to the substance of the deliberations** of the meeting.

[17] I will consider the three parts of the test for this exemption.

*1. A meeting of council, board, commission or other body or a committee of one of them has taken place; and*

[18] RVCL advised my office that the records in question were discussed during a December 12, 2014 Special Meeting of RVCL Council.

[19] It appears a meeting of Council has taken place, therefore the first part of the test is met.

*2. That a statute authorized the holding of the meeting in the absence of the public; and*

[20] RVCL relied on subsection 120(2)(b) of MA and indicated that this subsection of the MA was applicable as the review of the Capacity Study was for strategic or long-term planning purposes.

[21] This section of the Act does provide Council with the ability to hold a closed meeting therefore it was authorized to hold the closed meeting for this type of purpose.

[22] The second part of the test is met.

*3. That disclosure of the record at issue would reveal the actual substance of the deliberations or would permit the drawing of accurate inferences with respect to the substance of the deliberations of the meeting.*

[23] RVCL did not provide my office with any details as to how the information would reveal the substance of deliberations, or allow the drawing of accurate inferences of the substance of deliberations. Based on my review of the record, it is not clear to me how

the release of the record would reveal or allow the drawing of accurate inferences of the substance of the deliberations. Further, as discussed in the British Columbia OIPC Order F15-56, the record appears to be for the purposes of “stimulating discussion to provide council with general information.”

[24] As RVCL has not provided adequate information to my office to meet the third part of this test, I find that subsection 15(1)(b)(i) of LA FOIP does not apply to this record.

[25] My office provided RVCL with a Draft Review Report on this matter and it advised it intended to comply with my recommendation.

#### **IV FINDING**

[26] I find RVCL did not properly apply subsection 15(1)(b)(i) of LA FOIP to the record.

#### **V RECOMMENDATION**

[27] I recommend that RVCL release the record to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 14th day of December, 2015.

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