



## **REVIEW REPORT 132-2019**

### **Rural Municipality of Blaine Lake No. 434**

**September 18, 2019**

**Summary:**

The Rural Municipality of Blaine Lake No. 434 (the RM) received a request for RM minutes over a certain period. In response, the RM indicated that the minutes were not available. The Applicant requested a review of the RM's response by the Commissioner. The Commissioner found that the RM did not comply with section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) when replying to the Applicant. He recommended that the Reeve and RM staff seek training and create a policy and procedure. He noted that he had made those recommendations before. The Commissioner also requested more information about the RM's search in the form of an affidavit. The affidavit was not provided. The Commissioner recommended that the RM provide the affidavit to both the Commissioner and the Applicant. This is the seventh report the Commissioner has issued involving the RM.

## **I BACKGROUND**

[1] The Rural Municipality of Blaine Lake No. 434 (the RM) received an access to information request on March 19, 2019. The request was as follows:

I am requesting the approved minutes from September 2018 to present for all council meetings regular and special.

[2] The RM responded to the Applicant's access to information request on April 18, 2019. The RM informed the Applicant that the approved minutes were not available at that time, but that the RM was working on preparing the minutes. The RM also refunded the Applicant's \$20 application fee.

[3] On April 30, 2019, the Applicant requested a review of the RM's search by my office. The Applicant indicated that it was "absurd" that so many minutes were missing.

[4] On May 6, 2019, my office provided notification to both the Applicant and the RM of my intention to review the RM's search for records. My office also undertook a review of the adequacy of the RM's response to the access to information request.

## **II RECORDS AT ISSUE**

[5] As this review deals with a review of the RM's search for records and its response to the access to information request, there are no records to review.

## **III DISCUSSION OF THE ISSUES**

### **1. Does *The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP)* apply to the record?**

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

### **2. Did the RM 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 exercised this right when they made an access to information request to the RM on March 19, 2019.

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

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;

(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 43.1 and setting out the reason for which the request was disregarded.

(3) 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 14, 20 or 21 or subsection 28(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] The RM received the Applicant's access request on March 19, 2019. It replied to the Applicant on April 18, 2019. This is within the 30 day time period set out by subsection 7(2) of LA FOIP. This is a positive step.
- [11] However, the response to the access request must also contain elements described in subsections 7(2) and 7(3) of LA FOIP.
- [12] The RM's response to the Applicant's access request informed the Applicant of the following:
- the Applicant's application fee was being refunded;
  - the RM was unable to provide the minutes as they were not ready;
  - the RM was working on preparing the records;
  - the RM suggested that the Applicant contact the RM on a monthly basis to verify if the minutes were prepared; and
  - the RM expected the minutes of upcoming council meeting would be "readily available" online.
- [13] Essentially, the Applicant was denied access to responsive records. When this occurs, a local authority is required to inform the Applicant whether the record was denied because of one of the specific reasons listed in subsections 7(2)(b) to (g). In this case, it is unclear if the RM did not provide the Applicant with responsive records because they did not exist pursuant to subsection 7(2)(e) of LA FOIP, the RM planned to publish the record within 90 days pursuant to subsection 7(2)(c) of LA FOIP or for another reason contemplated by subsection 7(2) of LA FOIP.
- [14] Further, the RM's response did not advise the Applicant of the right to a request review by my office pursuant to subsection 7(3) of LA FOIP.
- [15] Instead, the RM's response was dismissive of the Applicant's access to information request. Once the RM receives an access to information request, LA FOIP is engaged and the RM must provide a response in accordance with section 7 of LA FOIP.

- [16] When asked why the RM did not provide a response, the RM indicated that the Administrator was new to the position. The RM indicated the Administrator will do better as she learns in the position.
- [17] I recommend that the RM seek specific LA FOIP training for its Administrator. I note a series of workshops organized by the Urban Municipal Administrators' Association and the Rural Municipal Administrators Association to be held in October 2019 and the 2019 Saskatchewan Connections Conference to be held in Saskatoon in September. In response to the draft report, the RM noted that the Administrator was enrolled in some upcoming training sessions.
- [18] Finally, I am not satisfied with the RM's response. I have addressed the issue of deficient section 7 responses with the RM in the past in Review Report 075-2017, 076-2017 and Review Report 143-2017. In Review Report 075-2017, 076-2017, I recommended that the RM create a written procedure for responding to access to information requests. In that case, the Reeve indicated that this RM would not respond to the recommendations in this Report as required by section 45 of LA FOIP. If the RM had followed my recommendation to create a written procedure regarding responding to access requests, the new Administrator may have had more guidance when responding to the requests.
- [19] Further, although the Administrator may have been new to the position, the Reeve was not. The Reeve is the "head" of the RM pursuant to subsection 2(e)(i) of LA FOIP. In Review Report 143-2017, I spoke at length about the duties imposed on the head by LA FOIP. I recommended that the Reeve contact the Ministry of Government Relations, the Ministry of Justice (Access and Privacy Branch), and the Saskatchewan Association of Rural Municipalities (SARM) for assistance on how to meet his obligations as the head of the RM under LA FOIP. The Reeve did not comply with this recommendation. In this case, it was again the Reeve's responsibility to ensure that the RM responded to the Applicant's access request in a compliant manner. The Reeve and the RM did not.

[20] More than three years after the access requests that were addressed in the above noted reports, the RM is still not responding to access to information requests in a manner that is compliant with section 7 of LA FOIP.

[21] Again, I recommend that the RM develop policies and/or procedures that will ensure it will provide written responses to access to information requests in accordance with section 7 of LA FOIP. As a starting point, the RM can review a sample policy contained on my office's website at [www.oipc.sk.ca](http://www.oipc.sk.ca). I also recommend that the Reeve contact the Ministry of Government Relations, the Ministry of Justice (Access and Privacy Branch), and the Saskatchewan Association of Rural Municipalities (SARM) for assistance on how to meet his obligations as the head of the RM under LA FOIP.

### **3. Did the RM perform a reasonable search for records?**

[22] Section 5 is clear that access to records must be granted if they are in the possession or under the control of the local authority subject to any applicable exemptions under LA FOIP.

[23] In the notification, my office requested that the RM describe its search efforts for the records in its possession or control that are responsive to the Applicant's request.

[24] 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. LA FOIP does not require the local authority to prove with absolute certainty that records do not exist. However, it must demonstrate that it has conducted a reasonable search to locate them.

[25] A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.

- [26] When conducting a review of a local authority's search efforts, details are requested that help my office understand the level of effort made to locate the records. Examples of the type of information that can be provided can be found in my office's resource *IPC Guide to Exemptions for FOIP and LA FOIP*.
- [27] In its submission to my office on May 21, 2019, the RM simply stated that the minutes from council meetings in 2019 have been finalized and posted to the RM's website. It also stated that the 2018 minutes are still a work in progress. It also indicated that it sought legal advice regarding the minutes.
- [28] On July 23, 2019, my office asked the RM to provide further information. My office requested further details such as where the RM usually keeps both physical and electronic copies of minutes and where the RM searched for responsive records. My office also asked for details about the practice of preparing records in a timely fashion and why the records were not prepared.
- [29] The RM indicated that the previous administrator was negligent in their duties and that is why the minutes do not exist. The RM indicated that signed and sealed originals were kept in a "minutes register" in the vault. The RM preferred not to "disclose where the electronic versions are" and did not confirm that the electronic copies were searched.
- [30] The RM pointed to the following resolutions from its June 11, 2019 meeting minutes which provide:

Res #211/19 In line with Best Practices, and to ensure compliance with § 111 of *The Municipalities Act*, all meeting minutes being approved during a regular RM of Blaine Lake #434 council meeting shall be signed and sealed, prior to the adjournment of the same meeting, and acknowledge this requirement as per The Municipalities Act.

...

Res #222/19 The Council of the RM of Blaine Lake #434 hereby acknowledges the the majority of minutes recorded in 2018, for Regular and Special Meetings were not signed, sealed nor managed properly by the previous Administrator.

Council also agrees that all Council Meetings are public, except where exempted in §120 of The Municipalities Act, and minutes resulting from these meetings are public

knowledge; therefore, the Reeve and Acting Administrator will sign the previous Administrators minutes, WITH the previous Administrator's handwritten mark-up's/corrections remaining, and with a disclaimer stating the information hereby found in this resolution, for the purpose of completing this task and having the minutes available for public viewing.

- [31] On May 13, 2019, the Applicant provided my office with various copies of minutes from council meetings ranging from November 6, 2018 to February 12, 2019, which the Applicant received from a different source. These minutes indicate that the minutes from various council meetings from October to January had been adopted.
- [32] I was not satisfied with the RM's description of its search. Further, it appeared that approved minutes did exist at the time the Applicant made the request. On August 8, 2019, I alerted the RM to the fact that the Applicant had provided me with these minutes. I asked for further explanation from the RM about why the minutes did not exist. I also requested that the Reeve provide the information in the form of an affidavit. Specifically, I asked the RM if any versions of the Minutes from September 2018 to February 2019 existed. If so, I asked that the RM provide copies. If versions of the minutes existed, I asked that the RM indicate how they are not responsive to the Applicant's request, if that was the RM's position. I also asked the RM to provide a detailed explanation of why the minutes were not maintained properly for such a long period of time.
- [33] I asked that the Reeve provide an affidavit by August 20, 2019. I did not receive any communication from the RM. I extended the deadline to August 23, 2019 and again did not receive any communication from the RM. The RM did, however, respond to the draft report.
- [34] The RM did not fully cooperate with my office during this review. I recommend that the RM continue its search for records and that the Reeve provide a detailed affidavit describing its search to my office within 7 days of issuing this report. The description should address all the questions my office has already asked of the RM.



[35] I also recommend that the RM provide the Applicant with updated versions of responsive minutes as they become available.

[36] I note that, prior to this report, I have issued six reports involving the RM. The RM has not provided a response to the first five Reports as required by section 45 of LA FOIP. This is the seventh report involving the RM and my office is in the process of reviewing an eighth. Most reports have centered around the process and procedure to obtain records. I am beginning to have a concern that this RM does not have a respect for provincial laws such as LA FOIP.

#### **IV FINDINGS**

[37] I find that the RM did not comply with section 7 of LA FOIP when replying to the Applicant's access to information request.

[38] I find that the RM did not perform a reasonable search for records.

#### **V RECOMMENDATIONS**

[39] I recommend that the RM seek specific LA FOIP training for its Administrator.

[40] I recommend that the RM develop policies and/or procedures that will ensure it will provide written responses to access to information requests in accordance with section 7 of LA FOIP.

[41] I recommend that the Reeve contact the Ministry of Government Relations, the Ministry of Justice (Access and Privacy Branch), and the Saskatchewan Association of Rural Municipalities (SARM) for assistance on how to meet their obligations as the head of the RM under LA FOIP.

[42] I recommend that the RM continue its search for records and that the Reeve provide a detailed affidavit describing its search to my office within 7 days of issuing this report. The description should address all the questions my office has already asked of the RM. I also recommend that the RM provide a copy of the affidavit to the Applicant.

[43] I recommend that the RM also provide the Applicant with updated versions of responsive minutes as they become available.

Dated at Regina, in the Province of Saskatchewan, this 18th day of September, 2019.

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