



## REVIEW REPORT 143-2017

### Rural Municipality of Blaine Lake #434

August 14, 2017

#### Summary:

The Applicant submitted an access to information request to the Rural Municipality of Blaine Lake #434 (the RM). He appealed to the Information and Privacy Commissioner (IPC) when he did not receive a response within the legislated timelines. The IPC found that the Reeve of the RM was failing to respect the Applicant's right to access records in the possession or control of the RM under section 5 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and that the Reeve is failing to meet his obligations under section 7 of LA FOIP. The IPC recommended that the RM disclose to the Applicant the records he is requesting within 15 days of the issuance of this report. He also 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.

#### I BACKGROUND

- [1] The Applicant, a councillor, submitted an access to information request to the Rural Municipality of Blaine Lake #434 (RM) on or about May 25, 2017. He requested records about project site cost details sheets for sites 64, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 85, 86, 87, 88, 89, 91, 92, 105, 46, 47, 48, 49, 50, 51, 52A, 52B, 52C, 52D, 52E, 52F, 52F, 52G, 52H.
- [2] He asserts he did not receive a receipt or any acknowledgement from the RM. To prove that he submitted a written access to information request to the RM, he provided my office with a copy of a cancelled cheque (dated May 25, 2017) he submitted to the RM to pay the \$20 application fee pursuant to subsection 5(1) of *The Local Authority Freedom*

*of Information and Protection of Privacy Regulations* (LA FOIP Regulations). He also provided my office with the Canada Post receipt that shows he sent his written request by registered mail to the RM. The receipt has the tracking number. The Canada Post website shows that the Applicant's mail was successfully delivered to the RM.

[3] On July 13, 2017, the Applicant requested a review by my office.

## **II RECORDS AT ISSUE**

[4] At issue is the RM's lack of compliance with its obligations under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

## **III DISCUSSION OF THE ISSUES**

[5] The RM qualifies as a "local authority" as defined by subsection 2(f)(i) of LA FOIP.

### **1. Who is the head of the RM?**

[6] Subsection 2(e) of LA FOIP defines "head" as follows:

2 In this Act:

...

(e) "head" means:

(i) in the case of a municipality, the mayor, reeve or chairperson of the local advisory committee, as the case may be;

[7] I find that the Reeve of the RM qualifies as the "head" of the RM for the purposes of LA FOIP.

### **2. Did the RM respond to the Applicant's request within the legislated timeline?**

[8] Section 5 of LA FOIP provides that an individual has a right to access records in the possession or under the control of a local authority, 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.

[9] Subsection 7(1) of LA FOIP directs the head of the local authority on what to do if it receives an access to information request 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.

[10] Subsection 7(2) of LA FOIP requires the head of the local authority 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:

[11] In this case, the Reeve (as the head) did not respond to the Applicant's access to information request within the legislated timeline of 30 days after the request is made. Therefore, I find the RM has refused the Applicant access to records pursuant to subsection 7(5) of LA FOIP, which provides:

7(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.

[12] I find that the Reeve failed to respect the Applicant's right under section 5 of LA FOIP. Further, I find that the Reeve failed to meet his obligations under section 7 of LA FOIP.

**3. Does the Reeve, as the head, have responsibilities under LA FOIP?**

[13] As already noted, LA FOIP is worded in such a way so that it is the head who is responsible for making decisions as to whether to withhold or disclose records to an Applicant. Where an Applicant has been refused access to records by the head, he or she may request a review by my office pursuant to subsection 38(1) of LA FOIP, which provides:

38(1) Where:

...

(b) a head fails to respond to an application for access to a record within the required time;

...

the applicant may apply in the prescribed form and manner to the commissioner for a review of the matter.

[14] In this case, the Applicant requested a review by my office. Therefore, my office notified the Reeve that it would be undertaking a review on July 17, 2017. My office requested that the Reeve provide a submission explaining why he did not respond to the Applicant's access to information request. My office did not receive a submission.

[15] In a telephone discussion with my office on July 13, 2017, the Reeve advised my office that according to *The Municipalities Act*, the Reeve does not have any authority or power to provide written notice to the Applicant under LA FOIP. He indicated that he only represents council and decisions made by council. He asserted he does not have authority to make decisions. Furthermore, he said he cannot respond to an access to information request without the approval of council.

[16] I note that subsection 93(1) of *The Municipalities Act* requires that the Reeve perform any duty imposed upon the reeve by *The Municipalities Act* or any other Act, or by bylaw or resolution which provides:

93(1) In addition to performing the duties of a councillor, a mayor or reeve has the following duties:

(a) to preside when in attendance at a council meeting unless this Act or another Act or a bylaw of council provides that another councillor is to preside;

**(b) to perform any other duty imposed on a mayor or reeve by this or any other Act or by bylaw or resolution.**

[emphasis added]

[17] Contrary to the Reeve's belief that *The Municipalities Act* prevents him from performing his duties under LA FOIP, I find that *The Municipalities Act* reinforces that the Reeve must meet his duties under LA FOIP. I disagree with the Reeve's position that the Reeve does not have power to make decisions under LA FOIP without council's approval. The powers and duties are vested in the head in LA FOIP, not council. The powers and duties are the head's responsibilities until he or she delegates pursuant to section 50 of LA FOIP, which provides:

50(1) A head may delegate to one or more officers of the local authority a power granted to the head or a duty vested in the head.

(2) A delegation pursuant to subsection (1):

(a) is to be in writing; and

(b) may contain any limitations, restrictions, conditions or requirements that the head considers necessary.

[18] 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 his obligations as the head of the RM under LA FOIP.

#### **IV FINDINGS**

[19] I find that the Reeve of the RM qualifies as the "head" of the RM for the purposes of LA FOIP.

[20] I find that the Reeve is failing to respect the Applicant's right under section 5 of LA FOIP. Further, I find that the Reeve is failing to meet his obligations under section 7 of LA FOIP.

[21] I find that the Reeve has responsibilities under both LA FOIP and *The Municipalities Act*.

**V RECOMMENDATIONS**

[22] I recommend that the RM disclose to the Applicant the records he is requesting within 15 days of issuance of this Review Report.

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

Dated at Regina, in the Province of Saskatchewan, this 14th day of August, 2017.

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