



REVIEW REPORT 144-2017 & 145-2017

Village of Lucky Lake

March 23, 2018

Summary:

The Applicant made an access to information request to the Village of Lucky Lake (Lucky Lake). Lucky Lake did not respond to the Applicant within the legislated timeline. The Applicant proceeded to request a review by the Commissioner. During the early resolution stage of the review, Lucky Lake provided a response to the Applicant. However, the Applicant was not satisfied with Lucky Lake's response which indicated that no records existed. Upon review, the Commissioner found that Lucky Lake did not respond to the Applicant within the legislated timeline. However, he found that it had demonstrated that its search efforts were reasonable and adequate for purposes of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner recommended that if Lucky Lake did not have a policy and process for responding to access to information requests that it develop them in order to assist it in meeting its statutory obligations under LA FOIP.

I BACKGROUND

[1] On February 22, 2017, the Village of Lucky Lake (Lucky Lake) received an access to information request from the Applicant for:

...

- Sales Receipts
- Change of ownership
- 1) Any sale receipts for the year 2002. Cross out any personal information on all documents if required.
- CIBC
- [name]
- Village of Lucky Lake
- [name]
- 2) 2012 Receipt – Village of Lucky Lake – [name] sold our home to [name].

Cross out any personal information if required.

3) Change of ownership documents from 1998 to 2016

- [2] On July 16, 2017, after receiving no response from Lucky Lake, the Applicant filed a Request for Review with my office.
- [3] During the early resolution phase, my office attempted to work with the Applicant and Lucky Lake to find a satisfactory resolution. On July 18, 2017, Lucky Lake responded to the Applicant's access request advising that it had done a thorough search and no records had been located.
- [4] On July 19, 2017, the Applicant advised my office that she was not satisfied with Lucky Lake's response to her and asked that my office continue with a review of Lucky Lake's search efforts and lack of a response within the statutory 30 day timeline under subsection 7(2) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [5] On July 19, 2017, my office notified Lucky Lake and the Applicant of my office's intent to conduct a review. My office requested Lucky Lake provide details of its search efforts and a submission explaining why Lucky Lake did not respond to the Applicant's access request within 30 days as legislated.

II RECORDS AT ISSUE

- [6] Lucky Lake has indicated that no records exist. This review will be of Lucky Lake's search efforts and lack of response within 30 days.

III DISCUSSION OF THE ISSUES

- [7] Lucky Lake is a "local authority" pursuant to subsection 2(f)(i) of LA FOIP.

1. Did Lucky Lake respond to the Applicant within the legislated timeline?

[8] 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:

[9] Subsection 12(1) of LA FOIP enables local authorities to extend up to an additional 30 days where one of the following conditions apply:

12(1) The head of a local authority may extend the period set out in section 7 or 11 for 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).

[10] As noted above, Lucky Lake received the access request via email on February 22, 2017. Lucky Lake responded via email July 18, 2017. No extension was applied by Lucky Lake.

[11] In its submission to my office, Lucky Lake explained that it did not respond to the Applicant because it could not discern what information she wanted. It explained that the Applicant sent 114 emails to Lucky Lake between August 2016 and February 22, 2017. The Applicant sent a further 84 emails between February 22, 2017 and March 24, 2017. Lucky Lake's lawyer sent a "cease and desist" letter to the Applicant on March 20, 2017, after months of what Lucky Lake considered harassment by the Applicant.

[12] In conclusion, it took Lucky Lake 146 days to respond to the access request. Lucky Lake's response time exceeded the legislated timeline.

2. Did Lucky Lake conduct an adequate search for records?

[13] Section 5 of LA FOIP provides an Applicant the right of access to records in the possession or control of a local authority:

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.

[14] 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 exemptions under Part III of LA FOIP.

[15] LA FOIP does not require a local authority to prove with absolute certainty that records responsive to an access to information request do not exist. It must, however, demonstrate that it has conducted a reasonable search to locate them.

[16] 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.

[17] 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. The submission to my office should outline the search strategy conducted which can include:

- 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.
- 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 IPC resource, *Using Affidavits in a Review with the IPC* available on our website.

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

[19] In its submission, Lucky Lake outlined the search it conducted. The acting Administrator, who has years of experience and a good working knowledge of the filing system conducted the search. On or about July 17, 2017, the acting Administrator looked for both paper and computer records as any records from 2002 would be in paper format and records from 2012 may be in either paper or computer format. In addition to previous searches, the acting Administrator spent approximately four hours searching for records. The acting Administrator provided the following details for each record:

Regarding records mentioned in 1) above:

I searched the paper receipts for 2002, as there aren't computer records. These receipts are kept in file boxes and cabinets within our office. No sales receipts were found in any of those names for the property in question.

Regarding records mentioned in 2) above:

I searched the paper receipts for 2002, as there aren't computer records. These receipts are kept in file boxes and cabinets within our office as well. No receipts were found in any of the names in question.

Regarding records mentioned in 3) above:

I searched the ISC records that this office received for those years, which were received in paper format. We only receive an Ownership Change notification if a property changes hands, and is within our municipality. These records are kept in our storage vault in our office. We received no ownership changes for the property in question.

...

These records don't reside in our office, since the Village of Lucky Lake never sold this property. We have received payments for the taxes and utilities that have come due on the property but nothing else from any records I could find. Any transactions that occurred between other parties, occurred outside of the Village of Lucky Lake office. The Village of Lucky Lake receives notifications from ISC/Land Titles if a property within our municipality changes hands, and we have no change of ownership records from ISC for this property. [The Applicant] has the certificate of title that shows it has been in her and her late husband's name since 1996.

[20] Based on what has been provided to my office, I find that Lucky Lake has demonstrated that its search for records was reasonable and adequate for purposes of LA FOIP.

IV FINDINGS

[21] I find that Lucky Lake did not respond to the access request within the legislated timeline.

[22] I find that Lucky Lake has demonstrated that its search for responsive records was reasonable and adequate for purposes of LA FOIP.

V RECOMMENDATION

[23] I recommend that if Lucky Lake does not have a policy and process for responding to access to information requests that it develop them in order to assist it in meeting its statutory obligations under LA FOIP including response times.

Dated at Regina, in the Province of Saskatchewan, this 23rd day of March, 2018.

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