



REVIEW REPORT 147-2016

Town of Kindersley

September 26, 2016

Summary: The Applicant appealed to the Information and Privacy Commissioner (IPC) when she believed that the Town of Kindersley (the Town) did not completely respond to her freedom of information request. The IPC found that the Town's response to the Applicant was not complete. Further, the IPC found that the Town's response to the Applicant did not comply with requirements of section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

I BACKGROUND

[1] On April 28, 2016, the Town of Kindersley (the Town) received the following freedom of information request:

Any and all agreements that the CAO, Bernie Morton has entered into without Council approval. Both above and below this positions [sic] limitations, so that residents can be assured policies and procedures have been followed.

[2] In a letter dated May 17, 2016, the Town responded to the Complainant by stating that there are no agreements or contracts that the CAO has entered into over \$10,000 without Council approval. It quoted its policy entitled *Financial Condition and Activities* (AL.3) by stating that the CAO shall not "[m]ake a single non-budget purchase over \$10,00 [sic], with 1% of operating budget as a ceiling for the fiscal year".

[3] On June 15, 2016, my office received a Request for Review from the Applicant. My office attempted to find an early resolution to settle the issues on this file. However, early resolution efforts were unsuccessful. Therefore, on July 12, 2016, my office sent a

notification to both the Town and to the Applicant advising that it would be undertaking a review.

II RECORDS AT ISSUE

[4] Since the Town asserted that no records exist, this review will look at the Town's efforts to respond to the applicant's request.

III DISCUSSION OF THE ISSUES

[5] The Town qualifies as a "local authority" as defined by subsection 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

1. Did the Town respond to the Applicant completely?

[6] My office's position is that it is best practice that public bodies assist Applicants when processing access to information requests to ensure that they respond to access requests completely. This would include addressing all parts of an Applicant's request.

[7] There were two parts to the Applicant's request. First, she requested records about any and all agreements that the Chief Administrative Officer (CAO) entered into above the CAO's limits without council approval. Second, she requested records about any and all agreements that the CAO entered into below the CAO's limits without council approval.

[8] As mentioned in the background section, the Town responded by stating no records exist because the CAO has not entered into any agreement above the CAO's limit without council approval.

[9] The Applicant's request was for agreements entered into by the CAO that was above and below the CAO's limits without council approval. The Town's response only addresses the first part of the Applicant's request, which are agreements entered into above the CAO's limit without council approval.

[10] In its submission dated August 3, 2016 to my office, the Town provided my office with a copy of the relevant pages of its Council Governance Manual which provides that agreements entered into by the CAO that are over \$10,000 must receive Council approval. The Council Governance Manual provides as follows:

The CAO shall not:

...

5. Make a single non-budgeted purchase over \$10,000, with 1 % of operating budget as a ceiling for the fiscal year.

...

10. Permit agreements over \$10,000 to be signed on behalf of the Town of Kindersley by other than the following persons: The Mayor, or in his absence, the Deputy Mayor AND the Chief Administrative Officer (CAO) or the CAO's designate, and all such Agreements over \$10,000 must receive Council approval.

[11] Then, in its submission, the Town asserts that the “Town is satisfied that there are no agreements that have been entered into by the CAO on behalf of the Town that fall outside of the parameters set by the Governance Manual”.

[12] The Town’s submission still does not address the second part of the Applicant’s request, which are agreements that are entered into by the CAO without council approval that are below the CAO’s limit. If the CAO has not entered into agreements on behalf of the Town that are outside of the parameters set by the Governance Manual, then it is possible that the CAO has entered into agreements below \$10,000 without council approval. Such agreements would be responsive to the Applicant’s request.

[13] In a letter dated September 16, 2016, the Town’s legal counsel advised my office that the CAO does not enter into agreements below the \$10,000 limit without Council approval. He also stated that “all agreements entered into by the CAO below \$10,000 have Council approval.” This is the very first time in the course of the review that the Town has addressed any agreement below the \$10,000 limit.

[14] In a letter dated September 16, 2016, the Town’s legal counsel emphasized that the Applicant’s request was for agreements entered into **without** council approval. Both the Town’s letter dated May 17, 2016 to the Applicant and the Town’s submission to my office only addressed agreements above \$10,000 – which are agreements that require

Council's approval according to the Town's Governance Manual. Neither the May 17, 2016 letter nor the Town's submission addressed agreements that are below \$10,000 and do not require council's approval according to the Town's Governance Manual.

[15] Therefore, I find the Town's original response dated May 17, 2016 to the Applicant was incomplete.

[16] In the course of this review, my office recommended that the Town create a listing of agreements entered into with or without Council approval and provide this listing to the Applicant. The Town's legal counsel responded by stating that the "Town has no legal or other obligation to determine if the Applicant wants documents other those she requested."

[17] My office also recommended to the Town that it make any contract entered into by the Town available to any person without requiring him or her to make a formal request under LA FOIP. This may include posting the contracts on the Town's website. My office's recommendation was based on subsection 117(1)(a) of *The Municipalities Act* which provides that any person is entitled to inspect and obtain copies of any contract approved by the council. Subsection 117(1)(a) of *The Municipalities Act* provides:

117(1) Any person is entitled at any time during regular business hours to inspect and obtain copies of:

(a) any contract approved by the council, any bylaw or resolution and any account paid by the council relating to the municipality;

[18] The Town's legal counsel noted that subsections 117(2) and (3) of *The Municipalities Act* contemplate someone making a request for such documents and that person then being obliged to pay a fee. It asserted there was no requirement for the Town to post such documents on the Town's website.

[19] In the Town's submission to my office, it referred my office to a Letter to the Editor that was published in the May 4, 2016 edition of the Kindersley Clarion. The Acting Mayor of Kindersley asserted that one of council's priorities was to maintain open and transparent communication. He explained a clerical error in which the Town entered into a contract but, due to a clerical error, council forgot to pass a resolution.

[20] In the spirit of the Town's priority of maintaining open and transparent communication, and in accordance with *The Municipalities Act*, I recommend that the Town make available to any person any contracts it enters into that have been approved by council. Since the Town's legal counsel asserts that the CAO only enters into contracts that have been approved by council, then any person is entitled to inspect and obtain a copy of any contract the Town enters into. This includes making any contract requested by the Applicant available to her.

2. Does the Town's response meet the requirements of section 7 of LA FOIP?

[21] A local authority's response to an access to information request should address all portions of the Applicant's request. This means that for each part of the Applicant's request, the local authority must have one of the following responses:

- a. State 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 (subsection 7(2)(a) of LA FOIP);
- b. State that requested record is published and refer the Applicant to the publication (subsection 7(2)(b) of LA FOIP);
- c. State that the record will be published within 90 days and give the Applicant the approximate date of publication (subsection 7(2)(c) of LA FOIP);
- d. State that access is refused and set out the reason for the refusal and identify the specific provision of LA FOIP on which the refusal is based (subsection 7(2)(d) of LA FOIP);
- e. State that access is refused because the record does not exist (subsection 7(2)(e) of LA FOIP)
- f. State that confirmation or denial of the existence of the record is refused (subsection 7(2)(f) of LA FOIP, and subsection 7(4) of LA FOIP).

[22] Then, the local authority must advise the Applicant that he or she may request a review by the Commissioner within one year of the local authority's response pursuant to subsection 7(3) of LA FOIP.

[23] I find that the Town's response did not meet the requirements of section 7 of LA FOIP. As stated earlier, the Town's response only addressed a portion of the Applicant request by stating that records do not exist. It did not provide a response to the second part of the Applicant's request. Also, the Town's response did not advise the Applicant that she can request a review by the Commissioner pursuant to subsection 7(3) of LA FOIP.

IV FINDINGS

[24] I find that the Town did not respond to the Applicant completely.

[25] I find that the Town's May 17, 2016 letter to the Applicant did not meet the requirements of section 7 of LA FOIP.

V RECOMMENDATIONS

[26] I recommend that the Town make available any contract approved by council available to any person, without requiring him or her to make a formal request under LA FOIP. This may include posting such contracts on its website.

[27] I recommend that the Town make any contract requested by the Applicant available to her pursuant to section 117 of *The Municipalities Act*.

[28] I recommend that the Town revise its procedures so that its responses to access to information requests meet the requirements of section 7 of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 26th day of September, 2016.

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