



REVIEW REPORT 148-2015

Resort Village of Candle Lake

December 14, 2015

Summary: The Resort Village of Candle Lake (RVCL) received an access request from the Applicant. RVCL denied access to the record pursuant to subsection 15(1)(b)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). It was found that subsection 15(1)(b)(i) of LA FOIP applied to the record. It was recommended that RVCL continue to withhold the record.

I BACKGROUND

[1] On July 10, 2015, the Resort Village of Candle Lake (RVCL) received an access to information request from an application for records related to a council meeting motion that stated:

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That Council directs administration for the purchase of MR that Council will be retaining all MR lands.

[2] In a letter dated July 27, 2015, the 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 July 30, 2015, my office received a request for review from the Applicant.

[4] On August 4, 2015, my office notified both the Applicant and the RVCL of its intention to conduct reviews. My office requested STC provide the records, index of records and submissions to support their application of subsection 15(1)(b)(i) of LA FOIP to deny access to records.

II RECORDS AT ISSUE

[5] The records at issue consists of 21 pages of letters and attachments between RVCL and a third party and a four page report prepared by RVCL for Council's consideration on this matter.

III DISCUSSION OF THE ISSUES

[6] The 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?

[7] 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;

[8] The 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.

[9] 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.

[10] Based on an initial review of the record at issue, it was not clear how the information would qualify as concerning long-range or strategic planning. However, RVCL clarified with my office that the decisions made in this meeting would not only discuss the matter before them but also a broader question of how they wanted to deal with these types of requests in the future as it would set a precedent.

[11] 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.

[12] 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.

[13] In British Columbia Information and Privacy Commissioner's (OIPC) Order F15-56, it provides as following 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.

[14] 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.

[15] 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

[16] RVCL advised my office that the records in question were discussed during a May 4, 2015 closed meeting of RVCL Council.

[17] 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

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

[19] This section of the MA does allow a Council to have a closed meeting to discuss strategic planning, therefore it was authorized to hold the closed meeting for this type of purpose.

[20] 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.

[21] RVCL also needs to show that the release of the records at issue would reveal the actual substance of the deliberations or would permit the drawing of accurate inferences with respect to the substance of deliberations.

[22] RVCL's submission did not address how the release of these records would reveal or accurately infer the substance of deliberations. However, as noted earlier in this report,

the British Columbia OIPC found that a record that was “essential to council’s deliberations” and “that all of the information in the Report is entirely and directly tied to the recommendation” would permit the drawing of accurate inferences with respect to the substance of the deliberations.

[23] I find similarities between the records at issue in this matter and the ones described in the British Columbia OIPC Order F15-56. It appears that the records at issue are essential to council’s deliberations and are directly related to the matter before council for decision and contains details directly tied to the recommendation. Based on this, it does appear the release of these records would allow someone to “accurately infer the substance of council’s deliberations.”

[24] Further, much of the responsive record contains personal information of a third party and the Applicant has not provided any documentation to my office to show there is consent to obtain this type of information.

[25] As the third part of the test is met, it appears that subsection 15(1)(b)(i) of LA FOIP was appropriately applied to this record.

IV FINDING

[26] I find that RVCL appropriately applied subsection 15(1)(b)(i) of LA FOIP to the record.

V RECOMMENDATION

[27] I recommend that RVCL take no further action in relation to this request.

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

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