



## **REVIEW REPORT 148-2016**

### **Town of Kindersley**

**September 26, 2016**

#### **Summary:**

The Applicant appealed to the Office of the Information and Privacy Commissioner (IPC) when she did not receive the external monitoring reports she requested from the Town of Kindersley (the Town). She believed these records existed according to the Town's Governance Manual. The IPC reviewed the records that were provided to the Applicant and they appeared not to be the external monitoring reports. In the course of the review, the Town identified additional records that are responsive to the Applicant's request but they were still not the external monitoring reports. The Town explained the types of records it does receive from its auditors, which does not include external monitoring reports. The IPC recommended that the Town release the additional records to the Applicant and amend its Governance Manual.

#### **I BACKGROUND**

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

All external audits and recommendations. All external monitoring reports and recommendations. Specifically 1.2/1.3/1.5 on page 20 of Governance Manual → External Audit

[2] In a letter dated May 13, 2016, the Town responded to the Applicant by stating that photocopies of the 2012 to 2016 External Audits were ready for pickup at its office. Included in its letter is a photocopy of page 20 of the Governance Manual, which was referenced in the freedom of information request. This Governance Manual is available on the Town's website.

[3] On June 16, 2016, the Applicant requested a review by my office. The Applicant asserted she believed she did not receive all the records outlined in the Governance Manual. Specifically, the Town had not provided her with external monitoring reports. My office attempted to resolve the issues through its early resolution process. However, early resolution efforts were unsuccessful. Therefore, on July 12, 2016, my office notified both the Applicant and the Town that it would be undertaking a review.

## **II RECORDS AT ISSUE**

[4] At issue is the completeness of the Town's response to the Applicant's request. In other words, at issue is the Town's effort to search for records responsive 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. Was the Town's response to the Applicant complete?**

[6] In a letter dated July 7, 2016, the Town asserted that "copies of the audited financial statements and the recommendations contained therein specifically relating to GP.9.1.2, GP.9.1.3, and GP.9.1.5 (as read in the attached page 20 from the Council Governance Manual) were received by [the Applicant] on May 27, 2016."

[7] Page 20 of the Governance Manual states that the auditor will meet with Council to provide an external monitoring report in January of each year. It also states that the auditor's management letter will be discussed with Council in May of each year. Page 20 of the Governance Manual provides as follows:

Council will appoint the external audit firm each year in November to conduct the audit the following year.

**The auditor will meet with Council to provide an external monitoring report at the working session in January of each year.**

The management letter will be discussed with Council in May of each year.

1. The audit opinion shall include, but is not limited to:
  - 1.1 The financial statements and presentation
  - 1.2 The system of internal controls
  - 1.3 Compliance with legislative and related authorities
  - 1.4 Significant estimates made by management
  - 1.5 Monitoring reports of Executive Limitations
2. The auditor shall provide recommendations for any corrective actions that may be required for:
  - 2.1 Safeguarding assets
  - 2.2 Investment activities
  - 2.3 Borrowing or spending activities
  - 2.4 Internal controls or any other matter of importance
3. All correspondence from the auditor will be addressed to Council. Council will forward any management letters to the CAO.

[emphasis added]

[8] On July 26, 2016, my office requested from the Town a copy of the records provided to the Applicant. Reviewing the records would help in determining if the records provided to the Applicant are in fact records outlined on page 20 of the Governance Manual.

[9] On August 4, 2016, my office received a copy of the records that were provided to the Applicant. The records include the following:

- Letter dated June 11, 2012 – Auditor’s letter to Council
- Letter dated June 13, 2013 – Auditor’s letter to Council
- Letter dated June 11, 2014 – Auditor’s letter to Council
- Letter dated June 22, 2015 – Auditor’s letter to Council

[10] These letters appear as though they would be responsive to a part of the Applicant’s request. However, these letters do not appear to be the “external monitoring report” that is to be provided to Council in January of each year, according to page 20 of the Governance Manual.

[11] In an email dated August 10, 2016, my office inquired of the Town to determine what letters or documents the Town receives from its auditors. On August 18, 2016, the Town stated it asked the Deputy Administrator/Director of Corporate Services to confirm the letters and/or documents the Town receives. The following are what the Town receives from its Auditors:

1. An outline of the terms of their engagement,
2. A confirmation to the Audit Committee of their independence, and
3. A detail of the audit findings.

[12] Based on the above, the Town does not receive external monitoring reports as stated on page 20 of the Governance Manual.

[13] Also in its response to my office on August 18, 2016, the Town stated there were eight additional records that were not provided to my office or to the Applicant. It explained that this was a clerical oversight and sent these eight records to my office for the purpose of this review. They are letters from the auditors outlining the terms of their engagement with the Town and establishing its independence for the purpose of the audits. I find that these eight records are responsive to the Applicant's request, although they do not appear to be the external monitoring reports. I find the Town's response to the Applicant to be incomplete.

[14] In the course of this review, my office recommended that the Town release these eight records to the Applicant. In a letter dated September 16, 2016, the Town's legal counsel stated it intends on providing these additional records to the Applicant. He stated that these records had been photocopied by the Town for provision to the Applicant but were found to be still in the original filing system. He stated that this was oversight.

[15] Also, my office recommended that the Town amend its Governance Manual so it accurately reflects the types of documents it currently receives from its Auditors so the public has an accurate understanding of what documents it has. Page 20 of the Governance Manual is dated 2009. Therefore, it is conceivable that practices have changed since then. In a letter dated September 16, 2016, the Town's legal counsel agreed to amend its Governance Manual.

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

[16] Section 7 of LA FOIP outlines the requirements of a local authority's response to an access to information request. First, the local authority's response should include 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).

[17] Second, 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.

[18] I find that the Town's letter dated May 13, 2016, did not meet the requirements of section 7 of LA FOIP. Specifically, it did not advise the Applicant that 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.

[19] In the course of my office's review, my office recommended that the Town revise its procedures so that its responses to access to information requests meet the requirements of section 7 of LA FOIP. In a letter dated September 16, 2016, the Town's legal counsel stated that the Town will consider my office's recommendation.

**IV FINDING**

[20] I find the Town's response to the Applicant to be incomplete.

[21] I find that the Town's response to the Applicant did not meet the requirements of section 7 of LA FOIP.

## **V RECOMMENDATIONS**

[22] I recommend that the Town follow through with its intention of releasing the additional eight records to the Applicant as described in paragraph [14].

[23] I recommend that the Town follow through with its intention of amending its Governance Manual so it accurately reflects the types of documents it receives from its Auditors so the public has an accurate understanding as described in paragraph [15].

[24] 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