



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 149-2016**

### **Town of Kindersley**

**September 26, 2016**

**Summary:** The Applicant submitted a freedom of information request to the Town of Kindersley (the Town). After 30 days, she had not received a response from the Town. She appealed to the Office of the Information and Privacy Commissioner (IPC). The IPC found that the Town did not meet the requirements of section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The IPC also found that the Town did not demonstrate it conducted an adequate search for records.

### **I BACKGROUND**

[1] On April 29, 2016, the Town of Kindersley (the Town) received the following freedom of information request:

Agreements regarding Kinsmen Park in the last 10 years. Any agreements that may still be in affect or are in affect for Kinsmen Park.

[2] On May 30, 2016, the Applicant requested a review by my office. She had not received a response from the Town regarding her request. My office attempted to find an early resolution to the issues on the file. However, early resolution efforts were unsuccessful. Therefore, on July 15, 2016, my office notified both the Town and the Applicant that it would be undertaking a review.

## **II RECORDS AT ISSUE**

- [3] At issue in this Review Report is the Town's lack of a response to the Applicant. Therefore, there are no records at issue on this file.

## **III DISCUSSION OF THE ISSUES**

- [4] 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 meet the requirements of section 7 of LA FOIP?**

- [5] 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

- [6] The Town did not provide a response to the Applicant within 30 days after it received the access to information request from the Applicant. Therefore, I find that the Town did not meet the requirements of section 7 of LA FOIP.

- [7] Some further background on this matter was that the Applicant had originally submitted a separate request (as detailed in Review Report 119-2016) prior to submitting the request discussed in this Review Report. The original request was for "All documentation regarding Kinsmen Park". The Town had issued a fee estimate dated April 19, 2016 for \$1244.95 to the Applicant for that request.

- [8] The request at issue in this Review Report is a narrowed version of the broad request the Applicant originally made. In a letter dated June 28, 2016, the Town indicated to my office that it had issued the Applicant a fee estimate dated April 19, 2016 and was waiting for the Applicant to provide a deposit. Based on this letter, it seems as though the

Town was processing both requests as one. Since the Town issued a fee estimate for the original request, it did not respond to the request at issue in this Review Report.

- [9] Both requests appear to be for similar types of records. However, separate freedom of information requests must be treated separately. I recommend the Town implement procedures to organize the freedom of information requests and to respond to each of them separately.

## **2. Did the Town conduct an adequate search?**

- [10] In the course of this review, my office was advised by the Town there are no records responsive to the Applicant's request. Therefore, my office requested the Town describe its search efforts so that my office can determine whether or not the Town made a reasonable effort to search for records. Public bodies can provide the following information in describing its search efforts:

- Outline the search strategy conducted:
  - 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. For more on this, see the OIPC resource, *A Contractor's Guide to Access and Privacy in Saskatchewan* available on our website.
- 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 OIPC resource, *Using Affidavits in a Review with the IPC* available on our website.

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

[12] In its submission dated August 3, 2016, the Town described both its paper and electronic filing system. For its paper filing system, it advised my office that it is an alphabetical system. It has main filing categories and each category can have one or two levels of sub categories. The Town provided us the following example: the main category "Correspondence" has the two sub categories "Council Correspondence" and "2015". The Town stated that the Executive Assistant to the Chief Administrative Officer and the Deputy Administrator is responsible for maintaining both the filing system and the index for it.

[13] For its electronic filing system, the Town described it as follows:

- It has a shared drive. Employees have different levels of access to this shared drive for security and privacy reasons.
- Employees have access to their own email accounts.
- Any searches for electronic documents or archived emails on secure drives must be done by an IT Specialist.

[14] The Town stated that it searched through both the paper and electronic files for agreements or contracts pertaining to the Kinsmen Park and said “no such files were located”.

[15] In a letter dated September 16, 2016, the Town’s legal counsel stated that the Town searched through electronic files and Council Minutes and also met with the Director who oversaw the Kinsmen Park for the 10 year period. The result of the search was that no records exist. The Town’s counsel noted that since the Applicant narrowed the request from the broad request discussed in Review Report 119-2016, the search for records was easier.

[16] While it could very well be the case that no agreement or contract exists related to the Kinsmen Park for the last 10 years, the following questions remain:

- Within its paper filing system, which folders did the Town search through? To help my office understand the Town’s search strategy and its efforts, it would have been helpful to provide my office with its index for its paper filing system, and then highlight which folders were searched through and the reasons for searching through those particular folders to demonstrate that it made a reasonable effort to search for responsive records.
- How is the shared drive organized? What folders exist on the shared drive and which folders were searched and why?
- Were keywords used to search the shared drive? If so, which keywords were used and what were the results of the search? For example, using the keywords “Kinsmen” or

“Kinsmen Park” may have yielded some responsive records. This could have demonstrated the volume of responsive records to support the Town’s fee estimate.

[17] I find that the Town has not demonstrated to my office that it has conducted an adequate search for records.

[18] Based on the fee estimate of \$1244.95 it issued to the Applicant for her original request for “All documentation regarding Kinsmen Park” (as discussed in Review Report 119-2016), it appears that the Town would have some records related to Kinsmen Park. In the course of the review, my office recommended that the Town provide a description of the types or categories of records it has on the Kinsmen Park. Based on this description, the Town can assist the Applicant in making far more accurate and narrower freedom of information requests for records in the future.

[19] In a letter dated September 16, 2016, the Town’s counsel stated the Applicant’s narrowed second request was sufficient to allow the Town to search for the records sought. He stated that “the Town has no legal obligation beyond what it did”.

[20] If the Town insists on only doing what it is legally obligated to do, then I recommend that it at least respond to freedom of information requests within legislated timelines. That is, the Applicant should not have to request a review by my office before the Town takes any action in responding to the Applicant’s freedom of information request.

[21] Further, in the May 4, 2016 edition of the Kindersley Clarion, the Acting Mayor of Kindersley wrote to the Editor stating that one of the council’s key priorities is maintaining open and transparent communication. Such a statement suggests that the Town is willing to do more than what it is legally obligated to do. I recommend that the Town provide a description of the types or categories of records it has on the Kinsmen Park so as to assist the Applicant in making far more accurate and narrower freedom of information requests for records in the future.

#### **IV FINDINGS**

[22] I find that the Town did not meet the requirements of section 7 of LA FOIP.

[23] I find that the Town has not demonstrated to my office that it has conducted an adequate search for records.

#### **V RECOMMENDATIONS**

[24] I recommend the Town implement procedures to organize the freedom of information requests and to respond to each of them separately within legislated timelines.

[25] I recommend that the Town provide a description of the types or categories of records it has on the Kinsmen Park. This description can assist the Applicant in making far more accurate and narrower freedom of information requests for records in the future.

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

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