



REVIEW REPORT 151-2020

Rural Municipality of Lumsden No. 189

April 27, 2021

Summary:

The Applicant made a request for access to information to the Rural Municipality of Lumsden (RM). The RM provided a fee estimate, and the Applicant paid a 50% deposit. When it provided the records to the Applicant, the RM advised the Applicant it had calculated a reduced fee and partially reimbursed the Applicant from the deposit they had paid. The Applicant questioned the reasonableness of the RM's fee as well as its search efforts. The Commissioner found the RM's fee was not reasonable and recommended the RM further reimburse the Applicant the sum of \$135.00. The Commissioner also found the RM's search efforts were reasonable and recommended it take no further action with respect to search.

I BACKGROUND

[1] On March 17, 2020, the Rural Municipality of Lumsden (RM) received an access to information request from the Applicant for the following:

All information, written and unwritten information, in any form, print, photos, email, texts, or handwritten however related, in any way, related to the processing of sand and gravel on [two land location descriptions] [third party names] over the last three years. This would include any permission, instruction, correspondence to or from, record, text or telephone record to the property owner, any RM of Lumsden employee, any RM of Lumsden Councillor, Reeve or anyone related by marriage to this request of related to but not limited to, in any way to the processing, sale or transportation of aggregates from said or adjacent property including and licencing, permitting or request for same. This would also include inclusion of any [name of engineering company] correspondence in any form, record of any payment, scope of work, engagement letters, etc.

- [2] On April 2, 2020 the RM emailed the Applicant to clarify their search parameters. Not hearing back from the Applicant, the RM mailed them a letter dated April 27, 2020, again seeking to clarify their search parameters and to state the Applicant needed to respond by May 1, 2020.
- [3] In a letter dated May 5, 2020, the RM quoted the Applicant a fee estimate of \$605. The RM requested the Applicant pay a 50% deposit, or \$302.50, prior to processing the access request, which the Applicant paid on May 15, 2020.
- [4] On June 12, 2020, the RM emailed the Applicant to advise the total cost for search came to \$150.00 and also attached the records; as a result, the RM refunded the Applicant \$152.50 from the deposit the Applicant paid.
- [5] On July 23, 2020, the Applicant asked my office to proceed with a review of the RM's fee estimate, as well as the RM's search efforts.
- [6] On July 24, 2020, my office notified the Applicant and the RM of my office's intent to undertake a review.

II RECORDS AT ISSUE

- [7] As this matter involves a review of the RM's fee estimate and search efforts, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [8] The RM qualifies as a "local authority" pursuant to subsection 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Therefore, I have jurisdiction to conduct this review.

2. Was the fee applied by the RM reasonable?

[9] Subsections 9(1) and (2) of LA FOIP provide as follows:

9(1) An applicant who is given notice pursuant to clause 7(2)(a) of LA FOIP is entitled to obtain access to the record on payment of the prescribed fee.

(2) Where the amount of fees to be paid by an applicant for access to records is greater than a prescribed amount, the head shall give the applicant a reasonable estimate of the amount, and the applicant shall not be required to pay an amount greater than the estimated amount.

[10] In its response to the Applicant on May 5, 2020, the RM provided the Applicant with the following fee estimate:

	Type of Fee	Calculation of Fees	Total Amount of Fees
1	Time required to search for records	18 hours x \$15/half hour	\$540.00
2	Time required to prepare records for disclosure	4 hours x \$15/half hour	\$120.00
3	Photocopies or computer printouts of Records	20 pages x \$0.25/page	\$5.00
4	LESS:	2 hours free x \$15/half hour	(\$60.00)
Total amount of fees required to process the request			\$605.00
DEPOSIT REQUIRED – 50% OF TOTAL ESTIMATE OF COSTS			\$302.50

[11] The RM provided the following context with respect to its \$605.00 fee estimate:

Upon receipt of the Access to Information Request, Administration reviewed the detailed information that the applicant requested, which appeared to be extensive. To ensure Administration was able to provide a complete and thorough search of all the records requested, without incurring costs for our ratepayers, the estimated fee was provided to the applicant (see the letter dated May 5, 2020) with the understanding that any unused amounts would be refunded.

[12] The Applicant paid the deposit of \$302.50 on May 15, 2020. The RM processed the access request and responded with its section 7 response to the Applicant on June 12, 2020 as follows:

Please find documents attached pursuant to the Access to Information Request that you submitted to the RM of Lumsden No. 189.

The total cost for the search came to \$150.00. You deposited \$302.50, therefore we will process a refund of \$152.50.

[13] As noted in the preceding paragraph, the RM determined its fee estimate of \$605.00 was too high and refunded a portion of it from the deposit paid by the Applicant. Because the RM ultimately adjusted its fee and charged the Applicant less, I am no longer dealing with the fee estimate pursuant to subsection 38(1)(a.2) of LA FOIP. This leaves me to consider the issue of the adjusted or final fee charged by the RM totaling \$150.00. With respect to my office's authority to review the final fee amount charged by the RM, subsection 38(1)(a) of LA FOIP provides my office with authority to review any decision made in a local authority's section 7 response to an applicant. Section 38(1)(a) of LA FOIP provides as follows:

38(1) Where:

(a) an applicant is not satisfied with the decision of a head pursuant to section 7, 12 or 36;

[14] As such, I will review the reasonableness of the \$150.00 final fee charged by the RM pursuant to subsection 38(1)(a) of LA FOIP based on the information the RM has provided.

[15] My office's resource *Guide to LA FOIP, Chapter 3: Access to Records*, Updated: August 10, 2020, at page 49 (Guide to LA FOIP) states that a *reasonable fee estimate* is proportionate to the work required on the part of the local authority to respond efficiently and effectively to an applicant's request. A fee estimate is equitable when it is fair and even-handed; that is, when it supports the principle that applicants should bear a reasonable portion of the cost of producing the information they are seeking, but not costs arising from administrative inefficiencies or poor records management practices. My office has established there are three kinds of fees that can be included in a fee estimate:

1. Fees for searching records;
2. Fees for preparing records; and

3. Fees for reproducing records.

[16] I note the RMs adjusted fee included two of the fees described in the preceding paragraph – fees for searching and preparing the records. It appears fees for reproduction were not included because the Applicant received the records electronically. The RM calculated its adjusted fee as follows:

Search location	Actual time required for search	Fee
[email address]	.75	\$22.50
[email address]	.5	\$15.00
[email address]	.75	\$22.50
[email address]	.5	\$15.00
[email address]	.25	\$7.50
[email address]	.25	\$7.50
Total Hours	3	\$90.00

Search location	Actual time required for search	Fee
Minutes	.5	\$15.00
Development Permit	.25	\$7.50
Reports to Council	.25	\$7.50
File Notes	2	\$60.00
Total Hours	3	\$90.00

Prepare records for disclosure	Actual time required	Fee
Total Hours	1	\$30.00

- Total Hours for request – 7 x \$30/hour = \$210.00
Subtract Two Hour Credit (2 x \$30/hour) = \$60.00
 Total = \$150.00

[17] I will consider search time and preparation time separately as follows.

Search Time

[18] Pages 51 and 52 of the Guide to LA FOIP provide guidance on calculating fees for searching. The times for search consist of every half hour of manual search time required to locate and identify responsive records. For example:

- Staff time involved with searching for records;
- Examining file indices, file plans or listings of either paper or electronic records;
- Pulling paper files/specific paper records out of files; and
- Reading through files to determine if records are responsive.

[19] Page 51 of the Guide to LA FOIP recommends the following in terms of how long it should take to search emails and paper or electronic records:

- It should take an experienced employee 1 minute to visually scan 12 pages of paper or electronic records to determine responsiveness;
- It should take an experienced employee 5 minutes to search one regular file drawer for responsive file folders; and
- It should take 3 minutes to search one active email account and transfer the results to a separate file folder.

[20] The RM claimed 6 hours of search time, consisting of 3 hours for searching the email accounts of 6 individuals, 1 hour for searching records in 3 electronic databases, and 2 hours for searching paper records. With respect to paper records, the RM described the efforts undertaken by one employee to search paper records or “file notes”, and stated it involved approximately 400 pages of handwritten notes; I will, therefore, only include this employee in my calculations. Based on the time estimates suggested by my office in the preceding paragraph, then, I calculate the following times for searching:

- 6 email accounts at 3 minutes per account = 18 minutes;
- 3 areas containing electronic records at 3 minutes per location = 9 minutes;

- 1 area (employee) searching 400 pages of “file notes” at 1 minute search per 12 pages = 33 minutes; and
- RM Meeting Minutes (binder) for 2017 to 2020 (48 sets of meeting minutes at approximately 4 pages per set or 192 pages) at 1 minute per 12 pages = 16 minutes.

[21] The RM did not provide a sufficient level of detail regarding its search efforts in order for my office to fully assess the RM’s claim of 6 hours search time. Such detail would have included factors such as the volume or number of records, folders, etc., required to be searched. The RM’s search strategy, outlined later on in this Report under my office’s review of its search efforts, appears to indicate the RM’s records are fairly well organized and that the RM knew where to search; that is, the search for records seems to have been straightforward. If it was not, the RM did not state otherwise, and my review needs to be based on the information provided to my office and if it supports what is reasonable in this instance. Based on this, I calculate a reasonable search time of 18 minutes + 3 minutes + 33 minutes + 16 minutes for a total of 70 minutes.

Preparation

[22] *Preparation* includes time spent preparing the record for disclosure including the time anticipated to be spent physically severing exempt information from records (Guide to LA FOIP, p. 52).

[23] Page 53 of the Guide to LA FOIP states that preparation time does not include:

- deciding whether or not to claim an exemption;
- identifying records requiring severing;
- identifying and preparing records requiring third party notice;
- packaging records for shipment;
- transporting records to the mailroom or arranging for courier service;
- time spent by a computer compiling and printing information;
- assembling information and proofing data;

- photocopying; and
- preparing an index of records.

[24] The responsive records, or the records the Applicant received, totaled 13 pages as follows:

- Pages 1 to 3 contain handwritten notes with no redactions;
- Page 4 is an email dated December 6, 2019, where an email address and part of a signature block have been redacted;
- Page 5 is a letter that has header information and a phone number redacted;
- Page 6 appears to be a cover page titled, “Appendix A...” with no redactions;
- Page 7 contains emails dated October 3, 2019 and September 26, 2019, with email addresses and signature block information redacted;
- Page 8 contains a letter with address information of the sender redacted;
- Page 9 is a resolution of the “Rural Municipality of Lumsden No. 189” with no redactions;
- Page 10 is an email to the Applicant dated October 21, 2019, with no redactions;
- Pages 11 and 12 are photographs with no redactions; and
- Page 13 is an email to the Applicant dated September 25, 2019, with no redactions.

[25] The test related to reasonable time spent on preparation is, generally, it should take an experienced employee 2 minutes per page to physically sever only (Guide to LA FOIP, p. 53). Given that there were 13 pages, and considering reasonable time spent to physically sever should be at a rate of 2 minutes per page, it should have taken 26 minutes to sever 13 pages (not taking into account that two of the pages were photographs and that the RM’s redactions do not appear to have been overly complex).

Total Fee for Search and Preparation

[26] Subsection 5(3) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) states that where search for responsive records

exceeds one hour, the local authority can charge \$15 for every half hour or portion of a half hour in excess of one hour for search. Subsection 5(3) of the LA FOIP Regulations provides as follows:

5(3) Where time in excess of one hour is spent in searching for a record requested by an applicant or in preparing it for disclosure, a fee of \$15 for each half-hour or portion of a half-hour of that excess time is payable at the time when access is given.

[27] I estimated that search time should have taken 70 minutes, and preparation time should have taken 26 minutes. The total time is 96 minutes. As there should be no charge for the first hour as per subsection 5(3) of the LA FOIP Regulations, the RM should have only charged for 36 minutes of time. As local authorities are able to charge for a portion of a half hour, I calculate a reasonable fee should have been \$30.00, and not \$150.00 as the RM calculated as its adjusted fee. As such, I find the RM's fee was not reasonable, and recommend it reimburse the Applicant the difference, or \$120.00 (from their fee of \$150.00).

3. Were the RM's search efforts reasonable?

[28] Section 5 of LA FOIP provides as follows:

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.

[29] Section 5 of LA FOIP 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 that may apply pursuant to LA FOIP.

[30] A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records reasonably related to the access to information 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. Examples of information to support its search efforts that local authorities can provide to my office include the following:

- For personal information requests – explain how the individual is involved with the local authority (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 organization’s 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 local authority’s control have been searched such as a contractor or information management service provider.
- Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
- Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicate what key terms were used to search if applicable.
- Indicate the calendar dates each employee searched.

- Indicate how long the search took for each employee.
- Indicate what the results were for 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 my office's resource, *Using Affidavits in a Review with the IPC* available on my office's website.

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

[32] On July 7, 2020, my office forwarded the following from the Applicant to the RM for response regarding what the Applicant felt were records not included in their access to information request:

The R.M. of Lumsden has bylaws which require persons and companies to report yearly what aggregate resources are removed. The bylaws also require all aggregate operations to renew their permits every two years.

Our property is surrounded by active aggregate operations yet none of the required reports or licence renewals have been forwarded to us. The bylaws also require adjacent landowners to be notified. That has not happened.

[33] On July 8, 2020, the RM provided the following to my office in response to the Applicant's questions:

To address the third matter [what I have quoted in the preceding paragraph], regarding missing records, specifically the request for "permits", "yearly reports of resources removed" and "notification for adjacent landowners"; our office did not received [sic] any applications for gravel extraction on "[land location description]" or "[land location description]" between "2017-2020", which are the land locations and time period that [Applicant] indicated in his LAFOIP request, therefore, there were no documents to provide.

[34] In its submission to my office, the RM further described its search efforts as follows:

Access Database Permits

The RM uses the windows based “Access” database software to log all permit applications and decisions. The database was first utilized in 1997 and has been used since. All permits are assigned a file number for tracking purposes. The file number always starts with the year that the permit is taken out and is chronologically assigned a number based on when the permit was submitted (Example: “2020-01” would mean the first permit submitted in the year 2020).

In attempt to satisfy the applicant’s request, administration reviewed the database from 2017 (starting at permit #2017-001) to present. No aggregate related applications were found in the database during the requested time period.

Minutes

After council meeting minutes are certified and approved by Council, they are uploaded onto the RM website and placed on the RM shared drive in an archive folder. Physical copies of approved, certified minutes are placed into a binder that is located in the RM vault. In attempt to satisfy the applicant’s request, administration went through minutes, starting in 2017. Furthermore, the PDF copies of minutes on the shared drive can be searched using keywords. Administration searched the “minutes archives” on the shared drive using the following words: “sand”, “gravel”, “aggregate”, “processing”, [land locations].

Reports to Council

All planning-related reports to Council are stored on the RM shared drive in a folder entitled “Community Planning Reports”. Inside of the “Community Planning Reports” folder are sub-folders labelled by year (Example: the sub-folder entitled “2019” contains planning-related reports from the year 2019). Inside each sub-folder are the labelled reports. In an attempt to satisfy the applicant’s request, administration went through subfolders: 2017, 2018, 2019 and 2020.

MPE Engineering Report

MPE Engineering Ltd. has been the RM’s engineer of record since March 2019. All reports, scopes, studies, service requests, etc. pertaining to MPE’s consulting services, are given an electronic file in a folder on the RM shared drive entitled “projects”. The “projects” file was reviewed to satisfy the applicant’s request. In addition, administration used the search function in their Outlook email software to find information related to services provided by MPE. Key words used in this email search included: “MPE”, “Aggregate”, “[name]” (MPE’s current file manager for the RM), and “[name]” ([name] predecessor). Any scopes or documents that the RM has ever received from MPE have either come from [name] or [name].

File Notes

Administration searched through any written documents that they may have in their office. [RM employee] keeps a diary. [RM employee] searched through [their] diary

from when [they] started to the current juncture in an attempt to find information that would satisfy the applicant's request.

[35] In terms of search efforts, the threshold that must be met is one of "reasonableness"; that is, it is not a standard of perfection. The RM has described the locations it searched and the key words it used to search given the Applicant's requested timeframe for the years 2017 to 2020. I further note the RM also searched paper records, such as employee notebooks. Given the Applicant's request and parameters for records between the years 2017 and 2020, the areas the RM searched and its search terms are reasonable.

[36] With respect to the Applicant's assertion that further records exist as I have outlined at paragraph [32] of this Report, I note it involves two very specific land locations as per their access to information request. In Review Report 159-2019 at paragraph [16], I stated that applicants set the parameters of their search requests so trustees can conduct an adequate search for records. As such, there is some onus on an applicant to establish their basis for believing further records exist, such as by providing supporting evidence. Although the Applicant states RM bylaws require it to report "yearly what aggregate resources are removed" and that their property "is surrounded by active aggregate operations", I have no evidence before me to support the notion that aggregate resources were removed from the two land descriptions in question for the years 2017 to 2020. As such, the RM's response to the Applicant is reasonable.

[37] Based on the aforementioned, I find the RM conducted a reasonable search for records and recommend it take no further action.

IV FINDINGS

[38] I find the RM's fee was not reasonable.

[39] I find the RM conducted a reasonable search for records

V RECOMMENDATION-

[40] I recommend the RM reimburse the Applicant \$120.00 from their fee of \$150.00.

Dated at Regina, in the Province of Saskatchewan, this 27th day of April, 2021.

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