



REVIEW REPORT 152-2016

Town of Kindersley

September 26, 2016

Summary: The Applicant submitted a freedom of information request to the Town of Kindersley (the Town). The Town responded by stating that no records exist. The Applicant appealed to the Information and Privacy Commissioner (IPC). The IPC found that the Town did not follow the best practice of assisting the Applicant.

I BACKGROUND

[1] On May 4, 2016, the Town of Kindersley (the Town) received the following freedom of information request:

Agreements/Contracts with South Saskatchewan Water Shed Stewards Inc. from 2008 to most current.

[2] In a letter dated June 1, 2016, the Town advised the Applicant that it had no agreements with South Saskatchewan Watershed Inc.

[3] On June 15, 2016, the Applicant requested a review by my office. On June 20, 2016, my office notified the Applicant and the Town that it would be undertaking a review.

II RECORDS AT ISSUE

[4] The Town has asserted that no responsive records exist. Therefore, there are no records at issue.

III DISCUSSION OF THE ISSUES

[5] The Town is a “local authority” pursuant to subsection 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

1. Did the Town fulfill the best practice of assisting the Applicant?

[6] When a public body responds to an Applicant stating that no records exist, my office’s customary approach to this issue is to determine if the Town made a reasonable effort to conduct an adequate search for records. This would include my office requesting a submission by the public body describing its search strategy and details of its actual search for records.

[7] However, in this case, the Town has asserted that it has no records because *The Municipalities Act* does not require it to have an agreement with the South Saskatchewan River Watershed Stewards Inc (SSRWSI). It stated this in a letter to the Applicant dated July 13, 2016 and in a letter dated August 3, 2016 to my office. The Town asserts that the Town is regulated by the Water Security Agency and not SSRWSI.

[8] SSRWSI website states that it is a “grassroots, community driven, non-profit organization working within the watershed to implement programs and initiatives that will protect the water resource”. The website states that membership with the SSRWSI is open to urban and rural municipalities, First Nations and entities (such as special interest groups) with similar goals and objectives as SSRWSI. The website lists the Town as a member. Being a member of the SSRWSI does not necessarily mean that there is an agreement between the Town and SSRWSI.

[9] On July 22, 2016, my office spoke with the Applicant. She stated she had submitted a subsequent freedom of information request for agreements between the Town and the Water Security Agency. She expressed frustration with the fact that the Town did not clarify with her at the time she submitted her freedom of information request. She stated that if the Town had clarified with her that the Town was regulated by the Water Security

Agency and not the SSRWSI, she could have submitted only one freedom of information request, instead of two.

[10] Since the Applicant's concern is the Town's lack of clarifying facts with her, then my office will not analyze the issue of the Town's efforts but whether it fulfilled the best practice of assisting the Applicant.

[11] Applicants have a responsibility to specify the subject matter of the record requested with sufficient particularity as to time, place and event to an individual familiar with the subject matter to identify the record. However, many applicants do not have detailed knowledge about the types of records a public body maintains. Therefore, my office encourages public bodies to keep in close, direct contact with an Applicant while processing the access requests for the following purposes:

- Clarify and narrow, if possible, the request to avoid unnecessary work,
- Determine if the request can be accommodated informally outside of the formal process provided by LA FOIP, and
- Keep the applicant up-to-date in terms of time extension, fees, exemptions, etc.

[12] All of the above are examples of how local authorities can fulfill the best practice of assisting the Applicant when she makes an access to information request.

[13] Subsection 6(3) of LA FOIP provides that, in cases where the head of a local authority is unable to identify the record requested, the head must let the Applicant know and invite the Applicant to provide additional details that might lead to the identification of the record.

[14] If the Town never had an agreement with the SSRWSI, then it would have been helpful if the Town clarified this matter with her soon after the Town received the freedom of information request.

[15] I note that the Water Security Agency was created on October 1, 2012. Prior to that, it was known as the Saskatchewan Watershed Authority. It is understandable that a citizen confuses the name "Saskatchewan Watershed Authority" with "South Saskatchewan

River Watershed Inc”. The Town would have been in a better position than a citizen to have known that the Water Security Agency changed its name. Therefore, it should have clarified that with the Applicant soon after it received the Applicant’s request.

[16] I find that the Town did not follow the best practice of assisting the Applicant.

[17] I also note that subsection 117(1)(a) of *The Municipalities Act* 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] Based on subsection 117(1)(a) of *The Municipalities Act*, the Applicant could have gained access to records outside of LA FOIP.

[19] In a letter dated September 16, 2016, the Town’s legal counsel took issue with my finding that the Town did not follow the best practice of assisting the Applicant. It stated that my office “ought not to find the Town non-compliant in a review because it failed to follow [my] office’s view of what may constitute best practices”. It argued there is no legal requirement for it to identify alternative records that the Applicant may be seeking.

[20] Section 44 of LA FOIP provides that a Commissioner’s report set out the Commissioner’s recommendations with respect to the matter and the reasons for those recommendations, and the Commission may make any recommendations with respect to the matter under review the Commissioner considers appropriate. Section 44 of LA FOIP provides:

44(1) On completing a review, the commissioner shall:

(a) prepare a written report setting out the commissioner’s recommendations with respect to the matter and the reasons for those recommendations; and

(b) forward a copy of the report to the head and:

(i) where the matter was referred to the commissioner by an applicant, to the applicant and to any third party notified by the head pursuant to section 41; and

(ii) where the matter was referred to the commissioner by a third party, to the third party and to the applicant.

(2) In the report, the commissioner may make any recommendations with respect to the matter under review that the commissioner considers appropriate.

[21] Therefore, my finding and recommendations remain.

IV FINDINGS

[22] I find that the Town did not follow the best practice of assisting the Applicant.

V RECOMMENDATIONS

[23] I recommend that the Town send an apology to the Applicant for not following the best practice of assisting the Applicant.

[24] I recommend that the Town implement processes so that it would follow the best practice of assisting the Applicant in making an access request.

[25] I recommend the Town make contracts approved by council available to citizens pursuant to subsection 117(1)(a) of *The Municipalities Act*. This may include making the contracts available on its website.

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

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