



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 152-2020

Northern Hamlet of Michel Village

October 27, 2020

Summary:

The Applicant submitted an access to information request to the Northern Hamlet of Michel Village (the Hamlet). After waiting in excess of 30 days for a response, the Applicant made a request for review to the Commissioner. The Commissioner found that the Hamlet did not meet its 30-day statutory deadline to provide the Applicant with its response pursuant to subsection 7(2) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner recommended that, within 15 days of the issuance of this Review Report, the Hamlet provide the Applicant with an updated section 7 response outlining which provisions of subsection 7(2) on which it was relying. The Commissioner also recommended that the Hamlet develop a policy and procedure for processing access to information requests that includes how to prioritize, process and manage an access to information request within the legislated timeframe.

I BACKGROUND

[1] On April 14, 2020, the Applicant mailed their access to information request to the Northern Hamlet of Michel Village (the Hamlet). On May 5, 2020, the Hamlet received the Applicant's access to information request via Canada Post, which included the following for the timeframe 2015 to 2018:

Requesting annual financial statements for the municipality for fiscal years 2015, 2016, 2017 and 2018.

- If possible, I want the audited financial statement with the covering letter to management from the auditor.

- In the absence of an audited financial statement, I would like the unaudited financial statement as presented to Council.
- In the absence of audited or unaudited financial statement, then I would like the monthly financial statement for the municipality as presented to Council each month in the fiscal years listed.
- If the information is not already provided in these financial statements, I would like an individualized statement of the annual remuneration and expense claims received by the mayor and each member of council in those fiscal years.

[2] On June 28, 2020, my office received a request for review from the Applicant. The Applicant indicated they had not received a response from the Hamlet by this date. In their email to my office, they stated the following:

The attached PDF documents and the string of emails below pretty well explain the efforts I have made to obtain information from the Northern Hamlet of Michel Village over the last couple of months. Unfortunately, they have yielded no results.

[3] From July 6, 2020 to July 30, 2020, my office attempted to engage the Hamlet in getting the Applicant a response. On July 9, 2020, my office emailed the Hamlet and asked that they provide the Applicant with its section 7 response by July 15, 2020. The Hamlet did not provide its section 7 response to the Applicant by this date, and on July 20, 2020, the Applicant agreed to wait until July 24, 2020, for a section 7 response from the Hamlet. My office emailed the Hamlet to follow up on its section 7 response on July 22 and July 29, 2020, but heard no response from it to those emails. On July 30, 2020, my office reached the Hamlet by phone and explained that as there had been no section 7 response to the Applicant by July 24, 2020, then my office would need to proceed to review.

[4] On July 30, 2020, my office provided notification to both the Hamlet and the Applicant of my office's intent to undertake a review of the Hamlet's lack of response within the legislated timeframe. The notification asked the Hamlet to provide a submission explaining why it did not respond within the legislated timeframe. To date, the Hamlet has not provided my office with its submission.

[5] In correspondence dated October 5, 2020, the Hamlet provided the Applicant with its section 7 response.

II RECORDS AT ISSUE

[6] This review is only considering the late section 7 response by the Hamlet. As such, no records are at issue in this review.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[7] The Hamlet is 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. Did the Hamlet comply with section 7 of LA FOIP?

[8] Section 5 of LA FOIP states that an individual has a right to access records in the possession or under the control of a local authority, if an access to information request is made:

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.

[9] The Applicant utilized this right by making an access to information request to the Hamlet on May 5, 2020.

[10] Section 7 of LA FOIP instructs a local authority what to do when it receives an access to information request. Section 7 of LA FOIP provides as follows:

7(1) Where an application is made pursuant to this Act for access to a record, the head of the local authority to which the application is made shall:

(a) consider the application and give written notice to the applicant of the head's decision with respect to the application in accordance with subsection (2); or

(b) transfer the application to another local authority or to a government institution in accordance with section 11.

(2) The head shall give written notice to the applicant within 30 days after the application is made:

(a) stating 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;

(b) if the record requested is published, referring the applicant to the publication;

(c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;

(d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;

(e) stating that access is refused for the reason that the record does not exist;
or

(f) stating that confirmation or denial of the existence of the record is refused pursuant to subsection (4); or

(g) stating that the request has been disregarded pursuant to section 45.1, and setting out the reason for which the request was disregarded.

(3) A notice given pursuant to subsection (2) is to state that the applicant may request a review by the commissioner within one year after the notice is given.

(4) If an application is made with respect to a record that is exempt from access pursuant to section 15, 16, 21, or 22 or subsection 29(1), the head may refuse to confirm or deny that the record exists or ever did exist.

(5) A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.

[11] Subsection 7(2) of LA FOIP requires a local authority to respond to an applicant within 30 calendar days of receiving an access to information request. In terms of calculating the due date, *The Legislation Act* establishes general rules that govern the interpretation of all statutory instruments in the province. Section 2-28 of *The Legislation Act* provides guidance on the computation of time and can be applied to the 30 day calculation as follows:

- The first day the access request is received is excluded in the calculation of time;

- If the due date falls on a holiday, the time is extended to the next day that is not a holiday;
- If the due date falls on a weekend, the time is extended to the next day the office is open; and
- As LA FOIP expresses the time in a number of days, this is interpreted as 30 calendar days, not business days.

[12] Some local authorities may be under the impression that the 30-day clock does not start until the right person in the organization receives the access to information request. However, this is not correct. The 30-day calendar response time begins when the local authority receives the access to information request (received on its premises or received by any of its employees).

[13] According to Canada Post tracking information provided by the Applicant, the Hamlet received the Applicant's access to information request on May 5, 2020. Therefore, it should have responded to the Applicant with a section 7 response on or before June 4, 2020. In this matter, pursuant to subsection 7(5) of LA FOIP, the Hamlet failed to provide its section 7 response to the Applicant by June 4, 2020. The Hamlet is now required to account for responsive records in its possession and/or control and only deny access to all or part of the records if permitted by the limited and specific exemptions set out by LA FOIP.

[14] On September 17, 2020, the Hamlet began providing the Applicant with some records. In correspondence dated October 5, 2020, the Hamlet provided the Applicant with its section 7 response stating, "[t]his is to inform you that your access request has been fully granted". The Hamlet's response went on to include a description of the records provided to the Applicant. It also stated that further records would be available once they had been audited. The response also included that records that would fulfill some parts of the Applicant's access to information request did not exist, as well it informed the Applicant of the right to request a review by my office.

[15] It is encouraging that the Hamlet responded to the Applicant, albeit outside the legislated timeline. I note, however, that its section 7 response dated October 5, 2020, did not include under which provisions of LA FOIP it was relying upon to withhold or deny records as required by subsection 7(2) of LA FOIP. In other words, it should have listed the provisions under subsection 7(2) of LA FOIP that applied.

[16] I find that the Hamlet did not provide its section 7 response to the Applicant within the legislated timeline. Further, its late response did not meet the requirements of subsections 7(2) LA FOIP. I recommend that within 15 days of issuance of this Review Report, the Hamlet provide the Applicant with an updated section 7 response outlining upon which provisions of subsection 7(2) of LA FOIP it is relying.

[17] I wish to add that despite requests from my office, the Hamlet did not provide a submission explaining its actions or decisions. In fact, efforts to make contact with the Hamlet were difficult. My office made the following attempts to reach the Hamlet:

- Three emails to the administrator of the Hamlet on August 31, September 8 and September 11, 2020. My office did not receive responses to these emails; and
- Two separate phone calls on August 31, 2020, and also on September 21, 2020 in which a message was left, but not returned.

[18] If the Hamlet had engaged with my office, my office would have been able to clarify, for example, what was required of it in my office's notification dated July 30, 2020. I can appreciate that the Hamlet may not be experienced in managing an access to information request. As such, I recommend it develop a policy and procedure for processing access to information requests that includes how to prioritize, process and manage an access to information request within the legislated timeframe. Many resources exist, which the Hamlet can access and utilize. These include materials developed by my office, as well as others, including the following:

- My office's *Sample Operational Policy: Access to Information Checklist* found at <https://oipc.sk.ca/assets/sample-operational-policy-and-checklist-for-municipalities-1.pdf>;

- My office's *A Guide to Submissions* (September, 2020) found at <https://oipc.sk.ca/assets/guide-to-submissions.pdf>; and
- Ministry of Justice's *Access to Information and Privacy Protection Online Training* found at <https://www.saskatchewan.ca/government/training-and-workshops/access-and-privacy-training-course-for-saskatchewan-executive-government>.

IV FINDINGS

[19] I find that the Hamlet did not meet its 30-day statutory deadline pursuant to subsection 7(2) of LA FOIP.

[20] I find that the Hamlet's late response was deficient pursuant to subsection 7(2) of LA FOIP.

V RECOMMENDATIONS

[21] I recommend that within 15 days of issuance of this Review Report, the Hamlet provide the Applicant with an updated section 7 response outlining which provisions of subsection 7(2) of LA FOIP it is relying.

[22] I recommend the Hamlet develop a policy and procedure for processing access to information requests that includes how to prioritize, process and manage an access to information request within the legislated timeframe.

Dated at Regina, in the Province of Saskatchewan, this 27th day of October, 2020.

Ronald J. Kruzeniski, Q.C.

Saskatchewan Information and Privacy
Commissioner