



REVIEW REPORT 153-2016

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 Office of 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:

Most current agreement or contract with Flocor Inc.

[2] On June 15, 2016, the Applicant requested a review by my office.

[3] On June 16, 2016, the Town sent a letter to the Applicant stating that it does not have an agreement with Flocor.

[4] On June 20, 2016, my office notified both the Applicant and the Town that it would be undertaking a review.

II RECORDS AT ISSUE

[5] The Town has asserted that no responsive records exist. Therefore, there are no records at issue on this file.

III DISCUSSION OF THE ISSUES

[6] 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 meet its duty to assist?

[7] In its letter dated July 12, 2016 to the Applicant, the Town stated that Town does not have an agreement with Flocor. It asserted that it has an agreement with Neptune Technology Group and that Neptune Technology Group maintains its own third party agreement with Flocor.

[8] The Town re-iterated the above in its submission dated August 3, 2016 to my office.

[9] Applicants rarely have detailed knowledge of the records held by a public body. However, they should have a reasonable basis for believing that records do exist. In a telephone call with my office on July 22, 2016, the Applicant stated that her basis for believing records exist is that both Flocor and Neptune Technology Group had done inspections on meters at residents’ homes.

[10] When I consider both the Town and the Applicant’s assertions, it is conceivable that both are true. In other words, it is conceivable that Neptune Technology Group has its own agreement with Flocor, and that both Neptune and Flocor inspected meters at residents’ homes.

[11] My office identified the following Council Board Reports on the Town’s website:

- Council Board Report. General Operating Fund. Date Range January 21, 2016 to February 10, 2016. Cheque 7764 made out to Flocor.
- Council Board Report. General Operating Fund. Date Range February 11, 2016 to March 24, 2016. Cheque 8041 made out to Flocor.
- Council Board Report. General Operating Fund. Date Range March 25, 2016 to April 20, 2016. Cheque 8186 made out to Flocor.

[12] Based on the above Council Board Reports, it is sufficient to conclude that some kind of relationship exists between the Town and Flocor since the Town is issuing cheques to the Flocor. The relationship may not have to include a formal agreement. However, as I stated earlier, Applicants rarely have detailed knowledge of the records held by a public body. Therefore, as part of the best practice to assist Applicants, my office encourages local authorities, 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.

[13] In this case, the Town could have contacted the Applicant to let her know what relationship it does have with Flocor, and what records it does have pertaining to Flocor.

[14] In a letter dated September 16, 2016, the Town's legal counsel stated that Flocor is a nationally recognized supplier used by many industries. He stated that many of the Town's departments order parts from Flocor so the Town issues cheques to Flocor. Further, he asserted that the Town explained the relationship between the Town, Neptune and Flocor.

[15] Based on the written communication provided to my office between the Applicant and the Town, such as the letter dated June 16, 2016 and the letter dated July 12, 2016, the Town explained to the Applicant that the Town does not have an agreement with Flocor and that Neptune maintains its own agreement with Flocor. My office did not observe any written communication explaining that the Town issues cheques to Flocor because the Town orders parts from Flocor.

- [16] Therefore, while an agreement between the Town and Flocor may not exist, I find that the Town has not followed 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] In the course of this review, my office recommended that the Town make contracts available to the public, which may include posting the contracts on the Town's website.
- [19] In a letter dated September 16, 2016, the Town's legal counsel stated that since no contract exists between the Town and Flocor, subsection 117(1)(a) of *The Municipalities Act* would not be applicable. Further, it stated that my office's recommendation is a "standard higher than is legally required by legislation".
- [20] My office has been working on many reviews with the Town. In the course of one of the reviews, the Town provided a copy of the Letter to the Editor (Letter) that the Acting Mayor of Kindersley wrote to the Kindersley Clarion. This Letter was published in the May 4, 2016 Kindersley Clarion. The Acting Mayor asserted that one of the Town's priorities is open and transparent communication.
- [21] In the spirit of open and transparent communication, I recommend the Town to be open and transparent by making its contracts available to the public. While posting the contracts on its website may exceed legal requirements, I suggest that by doing so, it may curb the amount of freedom of information requests it receives. Citizens can be referred to the website if they wished to scrutinize the contracts the Town has entered into. If the contract is not posted on the website, citizens can conclude that no contract exists.

IV FINDINGS

[22] I find that the Town has not followed the best practice of assisting the Applicant.

V RECOMMENDATIONS

[23] I recommend that the Town contact the Applicant within 30 days of receiving this Review Report, explain the nature of its relationship with Flocor and what type of records it does have pertaining to Flocor.

[24] 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