



REVIEW REPORT 154-2016

Town of Kindersley

September 26, 2016

Summary: The Applicant submitted a freedom of information request to the Town of Kindersley (the Town). The Town provided her with a one page record. The Applicant was dissatisfied so she appealed to the Office of the Information and Privacy Commissioner (IPC). The IPC found that the Town did not respond to the Applicant's request openly, accurately, and completely.

I BACKGROUND

[1] On May 5, 2016, the Town of Kindersley (the Town) received the following freedom of information request:

Most current agreement or contract with Neptune Technology Inc.

[2] On June 1, 2016, the Town sent a letter to the Applicant stating it did not have an agreement with Neptune Technology Inc.

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

[4] On June 16, 2016, the Town sent a letter to the Applicant stating it made a mistake and that it did have an agreement with Neptune Technology Inc.

[5] On July 4, 2016, the Applicant picked up a record from the Town. On July 22, 2016, the Applicant indicated to my office that she remained dissatisfied with the record she received. My office continued with its review.

II RECORDS AT ISSUE

- [6] At issue is the record received by the Applicant. The Applicant asserted that the one page record appeared to be more like a flyer than it was an agreement. It is dated November 23, 2015 and entitled “2016 Hardware and Software Extended Maintenance Agreement”. It includes Neptune’s logo and contact information along the footer.

III DISCUSSION OF THE ISSUES

- [7] 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 City respond to the Applicant’s request openly, accurately, and completely?

- [8] My office’s position is that it is best practice for local authorities to assist Applicants when Applicants submit an access to information request. Local authorities should take reasonable steps to ensure that they respond to access requests openly, accurately and completely.

- [9] On July 11, 2016, my office received a copy of the record that was provided to the Applicant. It reviewed the record and noted that in the second paragraph stated the following:

To ensure that the performance of your system works with optimum efficiency, we have enclosed a quotation for the extended maintenance of your Neptune Meter Reading Hardware and/or Software for 2016.

- [10] Since the second paragraph stated that there was an enclosed quotation, my office sent an email dated July 11, 2016 to the Town asking if there are any additional pages to the record.

- [11] On August 3, 2016, my office received the Town’s submission supporting its search efforts. The submission also included the additional pages that were requested. My office received the following:

- The one-page record dated November 23, 2015 already received by the Applicant.
- The second page to the record dated November 23, 2015 which was not provided to the Applicant.
- Purchase Order 51192
- Sales Inquiry date November 11, 2015. Document #10000566.
- Extended Maintenance Acknowledgement Form
- 2016 Hardware and Software Extended Maintenance Agreement dated March 9, 2016

[12] In a letter dated September 16, 2016, the Town's legal counsel explained that the Town's Utilities Clerk had provided the Town appointed staff person responsible for freedom of information requests with the first page of the 2016 Hardware and Software Extended Maintenance Agreement only. The Utilities Clerk was not aware that the additional information was pertinent to the freedom of information request. The Town appointed staff person took this one page at face value and provided the record to the Applicant. However, during the second search for records, the Utilities Clerk provided additional information.

[13] In an email dated September 16, 2016, my office was carbon copied on an email from the Town to the Applicant. The email attached the additional records.

[14] While I find that the Town did not respond to the Applicant openly, accurately, and completely, but it did take steps to correct the situation.

[15] 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;

[16] Based on subsection 117(1)(a) of *The Municipalities Act*, the Applicant could have gained access to records outside of LA FOIP. My office recommended that the Town post such documents on the Town's website.

[17] In its letter dated September 16, 2016, the Town's legal counsel advised that the Town does not agree with my office's interpretation of *The Municipalities Act*. It stated that its reasons are set out in its letter regarding my office's file 151-2016. In its letter dated September 23, 2016 regarding my office's file 151-2016, The Town's legal counsel argued that before a contract is made available under subsection 117(1)(a) of *The Municipalities Act*, that the provisions of subsection 18(1) of LA FOIP should be considered.

[18] I note that subsections 4(a) and 4(b) of LA FOIP provide:

4 This Act:

(a) complements and does not replace existing procedures for access to information or records in the possession or under the control of a local authority;

(b) does not in any way limit access to the type of information or records that is normally available to the public;

[19] If the Town relies upon subsection 18(1) of LA FOIP to refuse the Applicant access to a copy of the agreement between the Town and the Third Party, in whole or in part, than it would be preventing access to information in records that are normally available to the public pursuant to subsection 117(1)(a) of *The Municipalities Act*. Such a refusal would be contrary to subsection 4(b) of LA FOIP.

IV FINDINGS

[20] I find that the Town failed to respond to the Applicant's request openly, accurately, and completely but it did take steps to correct the situation.

V RECOMMENDATIONS

[21] I recommend that the Town revise its procedures so that it responds to freedom of information requests openly, accurately, and completely.

[22] I recommend the Town refund the Applicant the \$20 application fee, especially if the Applicant is entitled to the responsive records under subsection 117(1)(a) of *The Municipalities Act*.

[23] 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