



REVIEW REPORT 183-2015

Rural Municipality of Shellbrook #493

October 9, 2015

Summary: The Applicant requested records from the Rural Municipality of Shellbrook #493 (RM). The RM responded to the Applicant indicating that no responsive records existed. In addition, the RM advised that it did not have possession and/or control of records contained on the email accounts of RM Councillors. Upon review, the Commissioner determined that records created or maintained by a Councillor when performing work related to the RM's mandate and/or function are subject to *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found that the RM conducted a reasonable search for responsive records.

I BACKGROUND

[1] On September 2, 2015, the Rural Municipality of Shellbrook #493 (RM) received an access to information request for:

Any records or documents and emails involving REQUEST FOR ASSISTANCE IN RESOLVING A COMPLAINT on the installation of the culvert on [names of residents] quarter... on to [Applicant's] quarter...from May 1 2014 till January 8 2015.

I am asking for a search of all the e-mail address [sic] of all parties below including any deleted e-mails...

[2] On October 1, 2015, the RM responded to the Applicant by email indicating that four of the eleven email accounts listed by the Applicant in the access to information request were in the possession of the RM. The RM indicated that these four accounts were

searched and no emails were found that were not previously provided to the Applicant. The RM advised that no other records were found.

[3] On October 2, 2015, my office received a Request for Review from the Applicant.

[4] My office notified the RM and the Applicant of our intention to undertake a review on October 6, 2015. My office requested the RM provide details of its search efforts and arguments to support how it determined that records contained in certain email accounts were not in its possession and/or control. A submission was received from the RM on October 8, 2015.

II RECORDS AT ISSUE

[5] The RM has asserted that no additional records exist within its possession and/or control. Therefore, there are no records at issue in this review.

III DISCUSSION OF THE ISSUES

[6] The RM 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 RM conduct a reasonable search?

[7] Section 5 of LA FOIP provides the right of access 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.

[8] Section 5 is clear that access can be granted provided the records are in the possession or under the control of the local authority. LA FOIP does not require a local authority to prove with absolute certainty that records do not exist. It must however, demonstrate that it has made a reasonable effort to identify and locate responsive records.

- [9] A *reasonable search* is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request. The threshold that must be met is one of “reasonableness”. In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable.
- [10] The level of detail that can be provided to my office is outlined in my office’s resource, *IPC Guide to Exemptions*. Each case requires different search strategies and details depending on the nature of the records and the way an organization manages them.
- [11] In its submission, the RM asserted that seven of the email accounts listed by the Applicant were not in its possession and/or control because they were the Councillor’s personal email accounts. For this reason, it argued, LA FOIP would not apply.
- [12] The rule is LA FOIP applies to a Councillor’s records when they are created or maintained in the course of performing work related to the RM’s mandate and/or function. LA FOIP does not apply to a Councillor’s records that are created or maintained as a result of the Councillor conducting work on behalf of a citizen or when campaigning.
- [13] Therefore, the Councillor’s email accounts, whether personal or not, should be searched if those accounts are used to conduct RM work. For the future, the RM may want to consider creating separate RM email accounts for its Councillors to separate their duties.
- [14] Despite the RM’s position, it conducted searches of all eleven council members’ email accounts for responsive records. No records were located. The RM provided details of its search efforts.
- [15] In its submission, the RM outlined the dates it searched the email accounts, which employees searched, how long it took each employee and the key words used to search. In total, four and a half hours was spent searching the Inbox, Sent and Deleted folders. This included a second search to make sure nothing was missed. One hour was spent searching paper files. Some records had been located previously and were provided to

the Applicant. Those records were dealt with in another Review Report issued by my office (035-2015).

[16] On October 8, 2015, my office contacted the RM Administrator to gather further details regarding the search of paper files. The RM Administrator advised that there are nine file drawers contained in three file cabinets. There is one file used for records related to purchasing culverts. There is also one file for any records related to roads within the RM. Both of these files were reviewed, page by page. The RM Administrator also looked through the nine file drawers to see if there were any files that may likely contain records responsive to the access to information request. No further records were found.

[17] In conclusion, I find that the RM has detailed its search efforts. The threshold that must be met is one of “reasonableness”. Based on what has been provided to my office, I find that the RM has demonstrated that its search for records responsive to the Applicant’s access to information request was reasonable and adequate for purposes of LA FOIP.

IV FINDING

[18] I find that the RM has demonstrated that its search for records responsive to the Applicant’s access to information request was reasonable and adequate for purposes of LA FOIP.

V RECOMMENDATION

[19] There are no recommendations to be made at this time as I am satisfied with the efforts made by the RM in this circumstance.

Dated at Regina, in the Province of Saskatchewan, this 9th day of October, 2015.

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