

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF ██████████ IN RELATION TO INFORMATION
REQUESTED FROM THE RURAL MUNICIPALITY OF MERVIN NO. 499**

[1] ██████████ (the “Applicant”) forwarded an Access to Information Request form to the Rural Municipality of Mervin No. 499 (the “Respondent”), in which he requested the following:

“List of Records

1. All Reports and other records relating to the cause, origin or spread of the James fire at Turtle Lake which started on or about May 30, 2002.
2. If the fire started on privately owned land, any record disclosing the name of the land owner.
3. If the fire started as a result of the activities of a person or company:
 - (a) any record disclosing the name of the person or company; and
 - (b) a copy of any permit or authorization granted by the R.M. of Mervin #499 allowing those activities to take place.
4. All records evidencing the amount of fire fighting costs incurred by the R.M. of Mervin #499 for the fire fighting services it provided (as opposed to the fire fighting services provided by SERM).
5. All records relating to the amount of the fire fighting costs that SERM has charged to the R.M. of Mervin #499.
6. A copy of any agreement between the R.M. of Mervin #499 and the Village of Kivimaa-Moonlight Bay for the provision of fire fighting services by the R.M. of Mervin #499.
7. All records relating to the amounts collected by the R.M. of Mervin #499 to date on account of the fire fighting costs, including records indicating the party from whom each amount was collected and the amount that was collected from each party.”

[2] By a letter dated April 21, 2003, the Respondent replied as follows:

“This is in response to your *Access to Information Request Form* under the *Local Authority Freedom of Information Act [sic] and Protection of Privacy Act*.

With respect to the list of records which you are requesting which was enclosed with your application, please be advised that items #1, 2 and 3 regarding the cause of the James fire, origin etc. have been forwarded to Saskatchewan Environment in accordance with Section 7(1)(b) and Section 11(1) of the *Local Authority Freedom of Information and Protection of Privacy Act*. A copy of your request pertaining to these 3 items was forwarded on April 21, 2003.

I trust that this will meet with your approval.

Yours truly,

Earl McKee
Reeve”

[3] Section 11 of *The Local Authority Freedom of Information Act* provides the following:

“11(1) Where the head of a local authority to which an application is made considers that another local authority or a government institution has a greater interest in the record, the head:

(a) may, within 15 days after the application is made, transfer the application and, if necessary, the record to the other local authority or government institution; and

(b) if a record is transferred pursuant to clause (a), shall give written notice of the transfer and the date of the transfer to the applicant.

(2) For the purposes of this section, another local authority or a government institution has a greater interest in a record if:

(a) the record was originally prepared in or for the other local authority or the government institution; or

(b) the other local authority or the government institution as the first to obtain the record or a copy of the record.

(3) For the purposes of section 7 and section 7 of *The Freedom of Information and Protection of Privacy Act*, an application that is transferred pursuant to subsection (1) is deemed to have been made to the local authority or the government institution on the day of the transfer.

(4) Where the application is transferred to a government institution, *The Freedom of Information and Protection of Privacy Act*, and not this Act, applies to the application.”

The first three items in the Applicant’s Request were then forwarded to Saskatchewan Environment and Resource Management who responded to the Applicant. Based on that response, the Applicant made a separate application to this office for a review of Saskatchewan Environment and Resource Management’s decision to withhold documents from the Applicant. I have dealt with that application on a different file with a separate report.

[4] The Respondent then replied to the Applicant’s request for access to items 4 through 7 by a letter dated April 25, 2003, which stated:

“This is in response to your Access to Information Request Form under the *Local Authority Freedom of Information Act [sic] and Protection of Privacy Act*.

As I had indicated in my letter of April 21st, questions 1 to 3 have been referred to Sask. Environment. Regarding your other requests, we are not willing to disclose any information in regards to item’s [sic] numbered 4 thru 7 on your list of records requested based on Section 14(1)(d) which states “A head may refuse to give access to a record, the release of which could be injurious [sic] to the local authority in the conduct of existing or anticipated legal proceedings,” and based on Section 18(1)(d) which states “A head shall refuse to give access to a record that contains a statement of a financial account relating to a third party with respect to the provision of routine services from a local authority.”

Subject to Section 7(3) of the Act, you are hereby advised that you may request a review by the Commissioner appointed pursuant to *The Freedom of Information and Protection of Privacy Act* within one year after this notice is given.

Yours truly,

Earl McKee
Reeve”

[5] On May 22, 2003, the Applicant filed a Request for Review with my office. On May 29, 2003, I wrote to the Respondent as follows:

“RE: [REDACTED] and the R.M. of Mervin #499
Our File: 2003/034 RPR

I am in receipt of a Request for Review from the above named and enclose herewith the yellow copy of same.

I am also in receipt of a copy of your letters to the applicant dated April 21 and April 25 respectively and the present review is pursuant to the provisions of The Local Authority Freedom of Information and Protection of Privacy Act which deals with those records that you have refused access pursuant to your letter to the applicant of April 25, 2003.

I hereby advise you of my intention to conduct a review and would ask that you provide me with copies of the documents or records to which access has been denied together with your reasons and authority for refusing such access.

Please feel free to call me if you have any questions in this connection.”

[6] On June 27, 2003, the Respondent sent me the following letter:

“RE: [REDACTED] and the R.M. of Mervin No. 499
Your File: 2003/034 RPR

Pursuant to your letter of May 29th, 2003 advising of your intent to conduct a review with respect to information previously denied to [REDACTED] under the Local Authority Freedom of Information Act [sic] and Protection of Privacy Act, please find enclosed the following:

1. Invoices relating to costs associated with the James Fire
2. Letters from Saskatchewan Environment (SE) relating to the costs billed to the R.M. of Mervin by their department for the fire fighting services provided with respect to the James Fire.

3. A copy of the Emergency Measures organization agreement between the Resort Village of Kivimaa-Moonlight Bay and the R.M. of Mervin No. 499 which was enacted upon when both Municipalities declared a "state of emergency".
4. The total amount of funds collected with respect to billing of the James Fire as of May 30th, 2003 was 366,195.99. As indicated in our letter of April 25th, 2003, we are not prepared to disclose the individual amounts paid by either the private individuals or their insured as we consider this to be third party information which is personal and protected under the Local Authority Freedom of Information Act [sic] and Protection of Privacy Act, under Section 18(1)(d).

Regarding the letters received by Saskatchewan environment with respect to the amount invoiced to the R.M., you will note that there is more than one letter in this regard. This is due to the fact that the R.M. was trying to negotiate a reduction from the previous amount invoiced as well as receiving clarification as to the acceptance of an offer which was made to Saskatchewan Environment for the James Fire by the R.M. of Mervin No. 499.

In completing your review, we would respectfully request that you uphold our earlier decision with respect to the denial of the information requested based on sections 14(1)(d) and 18(1)(d) stated in our letter of refusal. In light of the recent statement of claim which was served upon the Municipality on May 29th, 2003 personally by [REDACTED], on behalf of Wawanesa Insurance, we feel it is even more imperative to uphold this decision based on section 14(1)(d). We have also recently been served with statements of claims by Sask. Mutual Insurance as well as Blue Insurance.

In closing, we trust that you review all relevant information and advise us in accordance with section 44 of the Local Authority Freedom of Information and Protection of Privacy Act as to your decision regarding the above.

If you have any questions with respect to the above or require clarification or additional information, please feel free to call my office at 845-2045.

Yours truly,

L. Ryan Domotor
Administrator"

[7] The Respondent has objected to disclosing the documents on the basis of sections 14(1)(d) and 18(1)(d) of *The Local Authority Freedom of Information and Protection of Privacy Act*. These sections read as follows:

“14(1) A head may refuse to give access to a record, the release of which could:

...

(d) be injurious to the local authority in the conduct of existing or anticipated legal proceedings;

...

18(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

(a) trade secrets of a third party;

(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to the local authority by a third party;

(c) information, the disclosure of which could reasonably be expected to:

(i) result in financial loss or gain to;

(ii) prejudice the competitive position of; or

(iii) interfere with the contractual or other negotiations of:
a third party; or

(d) a statement of a financial account relating to a third party with respect to the provision of routine services from a local authority;

[emphasis added].

[8] The records that the Respondent has refused to disclose include several invoices issued to the Respondent with respect to firefighting expenses. The Respondent has agreed to disclose the total amount of these invoices but has withheld the actual invoices and the details of each payee from the Applicant. The Respondent cannot however rely on section 18(1)(d) to deny access to these invoices because the invoices, with one exception, are not “from a local authority” but are issued to the local authority. One invoice in this group was issued by the Respondent to a fire association for custom grading but I do not find that the subject matter of this invoice is for “routine services” as required under section 18(1)(d). Instead it relates to unusual services

provided by the local authority in an emergency situation. I have also reviewed the remaining provisions of section 18 and I cannot find any of them are relevant to this application. Even if the invoices could be classified as “financial or commercial information”, there is no indication in any of them or in the information provided by the Respondent that the invoices were given to the Respondent in confidence.

[9] I would treat the series of letters between the Respondent and Saskatchewan Environment and Resource Management in the same fashion because there is no financial information given in confidence nor do the letters constitute invoices from the local authority. The invoices and letters therefore cannot be withheld from disclosure pursuant to section 18.

[10] The Respondent has also claimed that all of the documents withheld, including the invoices, series of letters with Saskatchewan Environment and Resource Management and the agreement creating the Emergency Measures Organization, are exempt from disclosure because their release would be injurious to the local authority’s conduct of existing legal proceedings that involve the Applicant and several insurance companies. On examination of these documents, I cannot find any reason why the disclosure of same would injuriously affect the conduct of the existing or any future legal actions in which the Respondent is involved. If these documents are relevant to the action which is unlikely, they would have to be disclosed to the opposing parties in the litigation under the Rules of the Court of Queen’s Bench. Furthermore, the costs of the firefighting and payees for same should be accessible to all members of the public in order to promote the transparency of the supplier process and to allow ratepayers and other interested parties to examine the costs to determine legitimacy. For these reasons, I find that the Respondent could not have validly withheld any of these documents on the basis of section 14(1)(d). All of the documents withheld should be disclosed to the Applicant.

[11] For the reasons outlined above, it is my view that the Respondent was not justified in denying access to all of the documents.

[12] Dated at Regina, in the Province of Saskatchewan, this 24th day of July, 2003.

RICHARD P. RENDEK, Q.C.
Acting Commissioner of Information
and Privacy for Saskatchewan