



REVIEW REPORT 204-2018

Northern Village of Pinehouse

November 19, 2018

Summary:

The Applicant submitted an access to information request to the Northern Village of Pinehouse (Village). After receiving no response, the Applicant made a request for review to the Information and Privacy Commissioner (Commissioner). Upon review, the Commissioner found that the Village was deemed to have refused access to all or part of the record as a result of failing to provide a section 7 response to the Applicant. Further, that the Village had not identified any exemptions under Part III of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to rely on to withhold the records. Finally, the Commissioner found that the Village could not request an extension pursuant to section 12 of LA FOIP as it missed the deadline to do so in the first 30 days. The Commissioner recommended the Village release the records to the Applicant. Further, the Commissioner recommended the Village Mayor delegate some of his powers under LA FOIP to another person that could process access to information requests when the Village Administrator was away. In addition, the Commissioner recommended the Village develop a policy and procedure for processing access to information requests and provide a copy to the Commissioner's office. Finally, the Commissioner recommended that the Minister of Government Relations direct an inspection or inquiry of the Village's obstruction in the operation of LA FOIP under sections 396 and 397 of *The Municipalities Act*.

I BACKGROUND

[1] On August 17, 2018, the Applicant sent an access to information request to the Northern Village of Pinehouse (the Village) via Canada Post. Tracking information indicated that the Village received the request on August 21, 2018. The Applicant requested access to:

All salary statements, claims for per diems and other supplementary income, and other expense claims submitted by the following officials of the Village:

- Mike Natomagan (mayor)
- Conrad Misponas (councillor)
- Martine Smith (administrator)

January 1, 2014 to June 30, 2018

- [2] On September 28, 2018, my office received a request for review from the Applicant. The Applicant indicated he had not received a response from the Village.
- [3] On October 1, 2018 and October 2, 2018, my office attempted to contact the Village via telephone. Voicemail messages were left for the Village Administrator.
- [4] My office called again on October 3, 2018 and left a message with a receptionist who said it was best to contact the Administrator via email. On that day, my office sent an email to the Village Administrator advising of the previous messages left, the request for review that my office received and requesting the Village advise if it had responded or intended to respond to the Applicant's access to information request. The email further advised that if my office had not heard from the Village by 2:30pm on October 4, 2018, my office would proceed with its review on the basis that no section 7 response was provided.
- [5] On October 4, 2018, after receiving no response from the Village, my office notified the Village and the Applicant of my office's intent to undertake a review. In the notification to the Village, my office requested the Village provide a response to the Applicant's access to information request by October 12, 2018. Further, it requested a submission by October 19, 2018, explaining why the Village had not responded within the legislated timelines pursuant to section 7 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [6] On October 9, 2018, my office received an email from the Village indicating that:
- I do not believe we received this one.
I went to ask who accepted this and they couldn't tell me at the local Post Office.
Can you email me a copy of the request please?

- [7] On October 10, 2018, my office emailed the Village a copy of the Applicant's access to information request. Further, my office requested the Village respond by October 19, 2018.
- [8] On October 12, 2018, my office received another email from the Village stating:
- ...We just received the FOI today. The lady that works at the Post Office said it just came in today.
- [9] On October 15, 2018, my office responded to the Village via email requesting that the Village check if the post office could provide a receipt to show the date of delivery. In addition, my office requested a response be provided to the Applicant by October 19, 2018.
- [10] On October 18, 2018, my office contacted the Village and spoke with an office assistant. The office assistant indicated that she had not looked at the Applicant's access to information request yet. My office reminded the office assistant that the deadline my office had provided was October 19, 2018. The office assistant said she thought she had 30 days. My office clarified that 30 days had already run out as the request was delivered to the Village on August 21, 2018. The office assistant indicated that the Village just received the request a week earlier on October 15, 2018. My office requested a receipt or other evidence that the Village received it on October 15, 2018. My office was advised there was no receipt or evidence to provide. The office assistant was reminded the deadline was October 19, 2018.
- [11] On October 25, 2018, my office called the Village again and spoke with the same office assistant who advised that she had been working on processing the Applicant's request. The office assistant advised that processing of the request had ceased because the Village Administrator contacted the office from out of country and told the office assistant she did not have delegated authority as the "head" to process the request. Further, the Village Administrator indicated that processing the request would have to wait until she was back from holidays on October 29 or 30th. In addition, she told the office assistant that the Village did not receive the request until October 3, 2018.

[12] On November 2, 2018, my office attempted to call the Village Administrator. There was no answer and no voicemail option. My office attempted to call two more times on this date. Both times my office was unable to speak with the Village Administrator. A message was left with the receptionist but no call was received back.

[13] On November 5, 2018, my office attempted to call the Village Administrator again. My office was transferred to the Village Administrator's telephone line but there was no answer. My office followed up with an email inquiring if the Village had responded to the Applicant.

[14] On November 6, 2018, the Village Administrator sent my office an email indicating that it was working on the request and that records were being gathered. Further, that a formal letter to the Applicant had requested an extension.

[15] Also on November 6, 2018, the Applicant provided my office with a copy of a letter he received from the Village. The letter stated:

...The Request includes salary statements, claims for per diems and other supplementary income and other expense claims submitted by the following officials of the Village: Mike Natomagan (Mayor), Conrad Misponas (councillor) and Martine Smith (Administrator).

All of which will be respectfully submitted on behalf of Mike Natomagan, Mayor of the Northern Village of Pinehouse by **November 23, 2018...**

II RECORDS AT ISSUE

[16] It is unclear what the responsive records are as the Village has not provided its formal response to the Applicant.

III DISCUSSION OF THE ISSUES

1. Does the Commissioner have jurisdiction?

[17] The Village is a local authority pursuant to subsection 2(f)(i) of LA FOIP. Thus, I have jurisdiction to conduct this review.

2. Did the Village comply with sections 7 and 12 of LA FOIP?

[18] 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.

[19] The Applicant utilized this right when he made an access to information request to the Village on August 21, 2018.

[20] Section 7 of LA FOIP instructs a local authority on what to do if it receives an access to information request:

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.

[21] Subsection 7(2) of LA FOIP requires local authorities to respond to applicants within 30 days of receipt of an access to information request. It is unclear how the Village determined that it did not receive the Applicant's access to information request until October 3, 2018. The Village provided no evidence that it was only received on October 3, 2018. On the other hand, a Canada Post registered mail tracking system receipt was provided to my office by the Applicant which showed that the Applicant's request was delivered to the Village on August 21, 2018. The following is an image of what the Applicant provided to my office:

8/27/2018

PRINT_ACTION.PAGE_TITLE

**Tracking number**

PG457055974CA

Product Type: Xpresspost**Expected Delivery:** 2018/08/24**Delivery progress**

Date	Time	Location	Description	Retail Location	Signatory Name
2018/08/21	14:21	PINEHOUSE LAKE, SK	Delivered		
2018/08/17	20:50	SASKATOON, SK	Item in transit		
2018/08/17	18:11	SASKATOON, SK	Item processed		
2018/08/17	13:02	SASKATOON, SK	Item accepted at the Post Office		

Features and Options

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[22] To be clear, the 30 days does not begin when the right person in the Village receives the request. It begins when the request arrives at the Village. It is up to the Village to make sure that it has appropriate processes in place to streamline requests coming in so it can meet its 30-day obligations under LA FOIP. Section 24 of *The Interpretation Act, 1995*, provides guidance on how the 30-day deadline in subsection 7(2) of LA FOIP is to be calculated:

- 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;
- As LA FOIP expresses the time in a clear number of days, this means 30 calendar days, not business days; and
- Additional time for scheduled days off, staff being away from the office due to illness or vacation are not provided for in LA FOIP.

[23] The Village should have a policy and process in place to expedite the handling of access to information requests that arrive at the Village. The process should begin the moment a request arrives at the post office.

[24] At one point, the Village office assistant was attempting to process the access request but was told to stop as she did not have delegated authority to do so. Section 50 of LA FOIP provides the rules regarding the delegation of the head's authority under LA FOIP. Section 50 provides:

50(1) A head may delegate to one or more officers or employees of the local authority a power granted to the head or a duty vested in the head.

(2) A delegation pursuant to subsection (1):

(a) is to be in writing; and

(b) may contain any limitations, restrictions, conditions or requirements that the head considers necessary.

[25] For the Village, the head is the Mayor as per subsection 2(e) of LA FOIP. The Mayor can delegate some of his powers and duties to more than one individual at the Village. In the event the Administrator is away, the alternate person can continue with processing. I recommend the Mayor delegate processing of requests to more than just the Administrator. If the Mayor is not prepared to do so, than the Mayor should be processing requests when the Administrator is not there. The Village cannot miss the 30-day deadline because the one person delegated to process is on holidays.

[26] In addition, the Village Administrator told the office assistant to stop processing the request. This request contemplated gathering a series of documents related to pay and expenses. The finding and collection of these documents certainly could have gone on while the Village Administrator was away. When the Village Administrator returned, she could have reviewed the documents collected and determined which ones could be released to the Applicant. I find the Village Administrator's instructions highly unusual and am concerned the instruction was given just to delay the entire process. I also note that the access request involved documents related to the Administrator herself and thus, she was in a conflict of interest position when it came to this access request.

[27] Pursuant to subsection 7(5) of LA FOIP, the Village failed to provide a section 7 response to the Applicant within the 30-day deadline. Therefore, it is deemed to have responded on the 30th day with a refusal to provide access. My office refers to this as a deemed refusal. The 30th day in this circumstance was September 20, 2018.

[28] The Village 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 in Part III of LA FOIP. However, at the time of this report, the Village has not done this. As such, the Village has not identified any exemptions in Part III of LA FOIP that it can rely on to withhold the records requested by the Applicant.

[29] The Applicant has advised my office that there is a by-election in the Village on November 28, 2018. Further, the delay in accessing these particular records impacts citizens being able to make informed decisions when voting.

[30] In the Village's letter to the Applicant dated November 6, 2018, it indicated it was requesting an extension to November 23, 2018. Section 12 of LA FOIP provides the rules for when a local authority can extend the 30-day deadline. Section 12 provides:

12(1) The head of a local authority may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:

(a) where:

(i) the application is for access to a large number of records or necessitates a search through a large number of records; or

(ii) there is a large number of requests;

and completing the work within the original period would unreasonably interfere with the operations of the local authority;

(b) where consultations that are necessary to comply with the application cannot reasonably be completed within the original period; or

(c) where a third party notice is required to be given pursuant to subsection 33(1).

(2) A head who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within 30 days after the application is made.

(3) Within the period of extension, the head shall give written notice to the applicant in accordance with section 7.

- [31] Subsection 12(2) of LA FOIP is clear that notice of an extension must be provided to an applicant within the first 30-days after an application is received by the Village. Therefore, it cannot request an extension 76 days after the Village received the Applicant's access to information request. Notice of an extension should have been provided to the Applicant before September 20, 2018.
- [32] Despite efforts by my office to connect with the Village, it continues to be difficult to get responses to emails and telephone messages. There appears to be a complete disregard by the Village for what LA FOIP requires of it. The purpose of LA FOIP is to enhance transparency and accountability within local government by providing citizens with the right of access to government records and the right of privacy over their personal information.
- [33] Including my office's most recent Review Report 104-2018, and the present report, my office will have now issued 13 Review Reports between 2013 and 2018 involving the Village.¹ 12 of these reports deal with section 7 responses not being provided, delays in providing it or responses being inadequate.² In addition, the Village did not cooperate with requests by my office in 10 of these cases.³ In one report, former Commissioner Dickson recommended that the Minister of Justice and Attorney General consider prosecution pursuant to subsection 56(3) of LA FOIP because the Village did not comply with a lawful requirement of the Commissioner (LA-2013-004). The prosecution did not proceed because the Village did what the Commissioner requested after the issuing of the public report.
- [34] Following the issuing of nine Review Reports in 2016 dealing with the same issues,⁴ I sent letters to the Deputy Minister of Government Relations and the Chief Executive Officer

¹ Saskatchewan OIPC Review Reports (SK OIPC) LA-2013-004, 141-2015, 036-2016, 037-2016, 039-2016, 040-2016, 056-2016, 098-2016, 106-2016, 110-2016, 171-2016, 104-2018 and 204-2018.

² SK OIPC Review Reports LA-2013-004, 036-2016, 037-2016, 039-2016, 040-2016, 056-2016, 098-2016, 106-2016, 110-2016, 171-2016, 104-2018 and 204-2018. Review Report 141-2015 dealt with search issues.

³ SK OIPC LA-2013-004, 036-2016, 037-2016, 040-2016, 056-2016, 098-2016, 106-2016, 110-2016, 104-2018 and 204-2018.

⁴ For reference to these letters being sent, see paragraphs [8] and [9] of Review Report 171-2016 and paragraph [15] of Review Report 104-2018.

for the Saskatchewan Urban Municipalities Association (SUMA). The letters requested assistance for the Village in understanding its obligations under LA FOIP. I sent those letters again following the issuing of Review Report 104-2018 in September 2018.

[35] I indicated in Review Report 104-2018, that if the Village continued the pattern of no cooperation with my office, I would consider recommending again that the Attorney General consider a prosecution under subsection 56(3) of LA FOIP.

[36] With the first and second review of the Village by my office, my office tended to believe that the Village just did not understand the legislation or the process. It was assumed that the Village just did not know LA FOIP applied to it in all respects and there was a need for the Village to take it seriously. By the 13th Review Report, it is becoming very clear with the Village that the Mayor and the Village Administrator are attempting to obstruct the lawful operation of LA FOIP. It appears deliberate and aimed at frustrating any applicant who requests information.

[37] My office will monitor this situation and where my office determines that there has been an offence under LA FOIP, will request the Director of Prosecutions consider prosecution.

[38] My office is concerned that the Mayor and the Village Administrator are obstructing the application of LA FOIP and believe that no town or village should be able to flagrantly disregard or obstruct the operation of a provincial statute. My office believes this matter should be reviewed. *The Municipalities Act* provides:

Inspection

396(1) The minister may require any matter connected with the management, administration or operation of any municipality, any committee or other body established by a council or any controlled corporation to be inspected:

- (a) if the minister considers the inspection to be necessary; or
- (b) on the request of the council.

(2) The minister may appoint one or more persons as inspectors or the Saskatchewan Municipal Board as an inspector for the purposes of carrying out inspections pursuant to this section.

(3) An inspector:

(a) may require the attendance of any officer of the municipality or of any other person whose presence the inspector considers necessary during the course of the inspection; and

(b) has the same powers, privileges and immunities conferred on a commission by sections 11, 15, 25 and 26 of *The Public Inquiries Act, 2013*.

(4) When required to do so by an inspector, the administrator, committee or other body established by a council or a controlled corporation being inspected shall produce for examination and inspection all books and records of the municipality, committee, other body or controlled corporation.

(5) The results of the inspection must be reported to:

(a) the minister;

(b) the council;

(c) if the inspection is with respect to a committee or other body established by the council, the committee or other body; and

(d) if the inspection is with respect to a controlled corporation, the controlled corporation.

(6) The minister may:

(a) disclose any information or report provided pursuant to subsection (5) in the form and manner that the minister considers appropriate; or

(b) in consultation with the council, allow the council to disclose the information.

Inquiry

397(1) The minister may order an inquiry described in subsection (2):

(a) if the minister considers the inquiry to be necessary; or

(b) on the request of the council;

(c) **Repealed.** 2014, c.19, s.31.

(2) An inquiry may be conducted into all or any of the following:

(a) the affairs of the municipality, a committee or other body established by the council or a controlled corporation;

(b) the conduct of a member of council, including conduct in relation to a conflict of interest pursuant to Part VII;

(c) the conduct of an employee or agent of the municipality, a committee or other body established by the council or a controlled corporation.

(3) The minister may appoint an individual to conduct the inquiry, or may request the Saskatchewan Municipal Board to conduct the inquiry.

(4) Any persons appointed to conduct an inquiry have the same powers, privileges and immunities conferred on a commission by sections 11, 15, 25 and 26 of *The Public Inquiries Act, 2013*.

(5) The results of the inquiry must be reported to:

- (a) the minister;
- (b) the council;
- (c) if the inquiry is with respect to a committee or other body established by the council, the committee or other body;
- (d) if the inquiry is with respect to a controlled corporation, the controlled corporation; and
- (e) if the inquiry is with respect to a councillor or employee, the councillor or the employee.

(6) The minister may:

- (a) disclose any information or report provided pursuant to subsection (5) in the form and manner that the minister considers appropriate; or
- (b) in consultation with the council, allow the council to disclose the information.

[39] The Minister of Government Relations has the power to direct an inspection or inquiry. I am recommending that the Minister direct an inspection or inquiry into the Village's obstruction of LA FOIP.

[40] There comes a time in society when an organization created by government that flagrantly disregards the rules set out by the Legislative Assembly that all necessary actions be taken to convince that organization that it is essential that it follow the laws of the Province of Saskatchewan.

[41] My office's findings and recommendations were shared with the Village on November 15, 2018. My office requested the Village identify any factual errors. Later on November 15, 2018, the Village Administrator responded in an email stating:

This is a letter from the post office employee who handed us the FOIP Request on October 12th.

I have no idea why we received it so late.

We have been diligently working on this request as we have an extra person in the office until December and are nearly complete.

We ask that the extension of November 23rd please be given to us and report be held off.

[42] Attached to the email was a typed letter dated November 16, 2018 which stated:

To Whom It May Concern,

I, [name removed] am writing this letter to indicate that I was working in the Pinehouse Lake Post Office the day of October 9th and October 12th 2018. I received a call from Martine Smith on October 9th asking if there were any parcels in the post office, not even an express post? I said no.

I handed the secretary Shaylen Natomagan the express post by [Applicant] on October 12th and asked for a signature. I have not seen the express post until this day, therefore the parcel was given to the customer the day it was received on October 12th, 2018. She signed for the express post on that day.

[43] There are a number of concerns with this response to my office. Firstly, the letter from the post office employee is not on Canada Post letterhead. Secondly, it was not accompanied with any evidence of the signature, date or what express post was handled on October 12, 2018. Further, and perhaps most importantly, the Village sent a letter to the Applicant dated November 6, 2018 stating that the Village received the Applicant's access to information request on October 3, 2018. The letter reiterates what the Applicant was asking for. For these reasons and in combination with the fact that my office attempted to contact the Village on several occasions without success between October 1st and October 9th, 2018, I am not persuaded by this letter.

[44] On the other hand, the Applicant has provided my office with a copy of the Canada Post registered mail tracking system receipt that showed that the Applicant's request was delivered to the Village on August 21, 2018.

[45] As I indicated earlier in this Report, the Village must get itself in line with what LA FOIP requires of it. If the Village had a clear process in place, it would not find itself trying to argue what date it received an access to information request. As a result of the systemic issues with the Village not meeting its 30-day statutory timeline, and in some cases providing no response at all, several applicants have begun tracking their access to information requests to the Village via Canada Post and providing copies to my office when making a request for review. This is unfortunate and a sign that the Village does not take its obligations under LA FOIP seriously.

IV FINDINGS

- [46] I find that the Village is deemed to have refused access to all or part of the record as a result of failing to provide a section 7 response to the Applicant.
- [47] I find that the Village has not identified any exemptions in Part III of LA FOIP that it can rely on to withhold all or part of the records.
- [48] I find that the Village could not request an extension pursuant to section 12 of LA FOIP as it missed the deadline to do so in the first 30 days.

V RECOMMENDATIONS

- [49] I recommend the Village release the records to the Applicant.
- [50] I recommend the Village Mayor delegate some of his powers under LA FOIP to another person that can process access to information requests when the Village Administrator is away.
- [51] I recommend the Village develop a policy and procedure for processing access to information requests that includes:
- how access to information requests are to be handled when they arrive at the Village post office (i.e. routing);
 - that requests be date stamped by the Village on the date of arrival; and
 - that processing begins immediately.
- [52] I recommend the Village provide a copy of this policy and procedure, once completed, to my office.
- [53] I recommend that the Minister of Government Relations direct an inspection or inquiry under sections 396 and 397 of *The Municipalities Act*.

Dated at Regina, in the Province of Saskatchewan, this 19th day of November, 2018.

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