



REVIEW REPORT 222-2017

Village of Lucky Lake

October 20, 2017

Summary: An Applicant submitted an access to information request to the Village of Lucky Lake (the Village). The Village responded to the request advising that no responsive records could be found. The Information and Privacy Commissioner (IPC) found that the Village had conducted an adequate search for records. The IPC recommended the Village amend its policies and procedures for access to information requests to document search efforts and establish a records retention and disposal schedule.

I BACKGROUND

[1] On July 20, 2017, the Applicant emailed the Village of Lucky Lake (the Village) requesting the following document:

May I request a copy of Form 1 which is the list of land arrears for 1998, 1999, 2000, 2001 and 2002 for [address of property].

[2] On August 23, 2017, the Applicant emailed our office advising:

On July 20 I requested a copy of Form 1 which is the list of land arrears for 1998, 1999, 2000, 2001 and 2002 for [address of property]. I have not yet received there [sic] response.

[3] On August 23, 2017, my office contacted the Village to inquire on the status of the response to the Applicant's request. The Village indicated it had received several emails from the Applicant requesting a number of records and many dealt with records that did not exist.

- [4] My office advised the Village it still had an obligation under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to respond to the Applicant's request.
- [5] The Village agreed to respond to the Applicant's request within a week.
- [6] On August 29, 2017, the Applicant received an email from the Village responding to her requests. In response to the Applicant's request for Form 1, the Village stated:
- In regards to Form 1 for the years you request. Your property was never listed on Form 1 and therefore once again I would be sending you a blank form because your property was not included. I am sending you the Tax Roll for those years to explain why your property would not have been listed. The only properties that get listed on Form 1 for reporting to council and the Newspaper are those properties that do not have a tax lien presently attached to them. As you can see I have highlighted your tax roll and because that property has a tax lien registered in [sic] was not necessary for the village to include the property on Form 1.
- [7] On August 30, 2017, my office contacted the Applicant to inquire if she had received a response from the Village. The Applicant advised that she had received a response and forwarded a copy to my office.
- [8] My office attempted early resolution with the Village and the Applicant on this request and others. The Village provided an explanation to the Applicant why her property would not have been included on Form 1 during the time period requested and provided copies of other documents to support its claim.
- [9] On September 6, 2017, the Applicant advised it was not satisfied with the Village's response and advised she was still seeking copies of Form 1 for the years requested to prove her property was not listed.
- [10] The Village agreed it would provide the Applicant with redacted copies of Form 1 for the years requested within the week.
- [11] On September 8, 2017, the Village responded to the Applicant indicating:

There isn't Form 1 documentation in our office for 1999 through 2002. I've looked through our files, and didn't find any documentation in this regard. Form 1 would be forwarded to a newspaper publisher (in our case, we publish Unpaid Taxes and other public notices in the Outlook newspaper) so I called The Outlook to ask if they have archived issues for those years. They do, but to get copies of the applicable ads would be at considerable cost. This is something you can request from them yourself; the notices are published between September and December in any given year. This would NOT be the Form 1, it would be the resulting ad from the properties listed on the Form 1 in each of those years.

[12] The Applicant advised my office it was not satisfied with the Village's response that no documents could be found and requested my office continue with its review regarding the Village's search efforts

[13] On September 19, 2017, my office notified the Applicant and the Village of our intentions to undertake a review of the Village's search efforts for the Applicant's request.

II RECORDS AT ISSUE

[14] There are no records at issue in this review as the Village indicates the records do not exist. This report will review the search efforts made by the Village that resulted in the conclusion the records do not exist.

III DISCUSSION OF THE ISSUES

[15] The Village is considered a "local authority" as defined by subsection 2(f)(i) of LA FOIP.

1. Did the Village perform a reasonable search for responsive records?

[16] In the notification, my office requested the Village describe its search efforts for the Applicant's request. Public bodies can provide the following information in describing its search efforts:

- Outline the search strategy conducted:
 - For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others;
 - Identify the employee(s) involved in the search and explain how the employee(s) is “experienced in the subject matter”;
 - Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search:
 - Describe how records are classified within the records management system. For example, are the records classified by:
 - alphabet
 - year
 - function
 - subject
 - Consider providing a copy of your organizations record schedule and screen shots of the electronic directory (folders & subfolders).
 - If the record has been destroyed, provide copies of record schedules and/or destruction certificates;
 - Explain how you have considered records stored off-site.
 - Explain how records that may be in the possession of a third party but in the public body’s control have been searched such as a contractor or information service provider. For more on this, see the OIPC resource, *A Contractor’s Guide to Access and Privacy in Saskatchewan* available on our website.
 - Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
 - Which folders within the records management system were searched and explain how these folders link back to the subject matter requested?
 - For electronic folders – indicate what key terms were used to search if applicable;
 - On what dates did each employee search?
 - How long did the search take for each employee?

- What were the results of each employee's search?
 - Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see the OIPC resource, *Using Affidavits in a Review with the IPC* available on our website.

[17] The above is a non-exhaustive list and is meant to be a guide only. Each case will require different search strategies and details depending on the records requested.

[18] The Village Administrator advised she had conducted the search and indicated she had a good working knowledge of the filing system and the types of records based on her job responsibilities and experience processing other requests from the Applicant regarding this property.

[19] The Village's search involved the paper files and folders for 1998 to 2002 as there were no electronic files for that time period. The Village's paper records for the time period are organized by subject and alphabetically.

[20] The Administrator indicated there were two filing cabinets with paper files. There were also two boxes of paper records and additional records stored on shelving in the vault. The Administrator focused the search efforts on records relating to properties, taxes and newspaper clippings in the filing cabinet that contained historical records and one box that contained miscellaneous records. However, the Administrator also reviewed the records in the vault, the second box that contained receipts and the other filing cabinet that contained current records to ensure there were no other files that may relate to the request.

[21] The submission indicated that many hours had been spent searching for records relating to the property in response to the Applicant's requests. My office requested the Village provide dates and amount of time spent searching for records specific to this request. While the exact dates and time spent searching was not recorded, the Administrator estimated a total of two or three hours spent searching for the records responsive to this request. She indicated the search likely took place on August 25 and 29, 2017.

[22] In my office's *Best Practices for Responding to Access Requests*, it provides the following regarding documenting the search for records:

When a public body responds to an access request, it is best practice to document every step of the search for records. When a public body intends to charge fees, this documentation is essential to calculate the fees and explain them to the applicant and the IPC in the event of a review.

However, it is best practice to document the search for records for every access request. This helps ensure consistent, thorough searches. Also, if the applicant believes that more records exist than have been identified, he/she can request a review by the IPC. In that case, the IPC will ask the public body for specific details about the search.

[23] In the future, it is recommended the Village document its search efforts including dates and amount of time spent searching for requested records.

[24] The Village's submission indicated that it was not able to locate any Form 1 documents. Form 1 is used to communicate applicable properties to the publishing newspaper to generate an advertisement. As the contents of the form resulted in a newspaper advertisement, it is the Village's assumption that it was determined there was not a need to retain a copy for its records.

[25] The Village advised that it contacted the newspaper office, The Outlook, to determine if they had records archived from the time period. The Village indicated that The Outlook advised it would have archived issues of the newspaper from the time period, not the Form 1 submitted by the Village, but would be a considerable cost to locate and provide copies.

[26] When asked if the Village had established a records retention and disposal schedule, the Village indicated it had not formally adopted one. It did indicate, however, that in the past couple of years it had started to use the Ministry of Government Relation's resource *Records Retention and Disposal Guide* as a guideline for its records.

[27] Subsection 116(1) of *The Municipalities Act*, requires municipalities to establish a records retention and disposal schedule. It provides:

116(1) A council shall establish a records retention and disposal schedule, and all documents of the municipality shall be dealt with in accordance with that schedule.

[28] I recommend the Village establish a records retention and disposal schedule to ensure records are appropriately retained.

[29] Based on the information provided by the Village, it appears it has performed an adequate search for the requested records.

IV FINDING

[30] I find that the Village conducted an adequate search for records.

V RECOMMENDATIONS

[31] I recommend the Village amend its policies and procedures to require staff to document their search efforts when processing access to information requests, including dates and amount of time spent searching for responsive records.

[32] I recommend the Village establish a records retention and disposal schedule.

Dated at Regina, in the Province of Saskatchewan, this 20th day of October, 2017.

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