



REVIEW REPORT 223-2018

Rural Municipality of Blaine Lake #434

January 8, 2019

Summary:

The Applicant submitted a letter to the Rural Municipality of Blaine Lake #434 (R.M.) to request information related to ongoing privacy concerns involving them. The Commissioner found that the Applicant's letter to the R.M. was not an *application* as per subsection 6(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Consequently, the Commissioner also found that he did not have jurisdiction to investigate the matters at issue in this review, and that the legal obligations normally imposed on the R.M. when an *application* exists were not engaged. Finally, the Commissioner found that he has jurisdiction to conduct an investigation pertaining to the privacy concerns outlined in the Applicant's letter to the R.M., which to date have not been addressed, and will proceed with initiating an investigation in this regard.

I BACKGROUND

[1] On August 22, 2018, the Applicant submitted a written request to the Rural Municipality of Blaine Lake #434 (R.M.) in the form of a written letter. The letter outlined the Applicant's ongoing privacy concerns involving the R.M. and at the end of the letter, the Applicant requested specific information related to their privacy concerns.

[2] On October 3, 2018, the Applicant contacted my office for assistance with their request as they had not received a response from the R.M. As my office often assists in resolving access and privacy related matters between individuals and public bodies through early resolution efforts, my office proceeded to assist both parties in this case. During this time, the R.M. advised my office that they did not consider the Applicant's letter an *application*

for access to information pursuant to subsection 6(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

- [3] As the matters between the Applicant and the R.M. could not be resolved through early resolution efforts, on October 25, 2018, my office provided notice of its intention to review to the R.M. The notice of review requested that the R.M. provide the reason(s) for not responding to the Applicant's letter within the legislated timeline pursuant to section 7 of LA FOIP and provide the reason(s) why the R.M. would not accept the Applicant's letter. The notice of review requested a response within fourteen days after receipt of the notice, in accordance with my office's *Rules of Procedure*. My office received the R.M.'s response on November 28, 2018.

II RECORDS AT ISSUE

- [4] At issue is whether the Applicant's letter to the R.M. constitutes an *application* pursuant to subsection 6(1) of LA FOIP and whether the R.M. complied with its obligations under LA FOIP. Therefore, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Does the Applicant's written request to the R.M. constitute an *application* as per subsection 6(1) of LA FOIP?

- [5] Subsection 6(1) of LA FOIP outlines the requirements for applicants when requesting access to records as follows:

6(1) An applicant shall:

- (a) make the application in the prescribed form to the government institution in which the record containing the information is kept; and
- (b) specify the subject matter of the record requested with sufficient particularity as to time, place and event to enable an individual familiar with the subject matter to identify the record.

[6] Further, subsection 2(i) of LA FOIP states that:

2 (i) “prescribed” means prescribed in the regulations;

[7] Form A in PART III of the LA FOIP Regulations is the prescribed form to be used by applicants in accordance with subsection 6(1). Form A requires that an applicant provide specific information about himself or herself and about the record(s) they are requesting from a local authority.

[8] In determining whether applicants can deviate from using Form A, it is necessary to consider the provisions contained in *The Interpretation Act, 1995*. This Act establishes general rules that govern the interpretation of all statutory instruments in the province of Saskatchewan. It defines words commonly used in legislation, thereby removing the need to define the same words every time they are used in legislation. Of particular interest in this case is the interpretation provided regarding prescribed forms:

26(1) When a form is prescribed by or pursuant to an enactment, deviations from it that do not affect the substance and are not calculated to mislead do not invalidate the form used.

[9] The Saskatchewan Government has tabled Bill 155, *An Act respecting Statutes and Regulations and making consequential amendments to certain Acts*, which if passed, will replace *The Interpretation Act, 1995*. However, like *The Interpretation Act, 1995*, Bill 155 will continue to provide an interpretation for what constitutes deviations from required forms:

Deviations from required form

2-26 If an enactment requires the use of a specified form, deviations from the form do not invalidate a form used if:

- (a) the deviations do not affect the substance;
- (b) the deviations are not likely to mislead; and
- (c) the form used is organized in the same way or substantially the same way as the form the use of which is required.

- [10] Subsection 26(1) of *The Interpretation Act, 1995*, and subsection 2-26 of Bill 155 which may come into force later, clearly provide that it is not mandatory for an individual to use the prescribed form in PART III of the LA FOIP Regulations to make an application for access to information to a local authority. As long as the substance or intent of a written request is clear and it contains the information that would otherwise be provided via the prescribed form, such a request would be considered an *application* pursuant to subsection 6(1) of LA FOIP.
- [11] Matters related to whether or not an individual must use a prescribed form have been previously examined. For example, in the federal court decision *Mitchell v. Canada* (2003), an individual submitted a letter to the Canada Revenue Agency (CRA) to seek a reassessment in accordance with the *Income Tax Act*, rather than use the prescribed form. The individual intended their letter to serve the same purpose as that of the prescribed form.
- [12] The judge in *Mitchell v. Canada* (2003), drawing on section 23 of the *Interpretation Act, R.S.C. 1985, C I-21*, concluded that the CRA is obliged to treat any document, including a letter, sent to their organization in the place of the prescribed form provided it contains the necessary information.
- [13] In the present case, the first sentence of the Applicant's letter states, "Reeve and Councillors: This letter and attachments are in regard to on going [*sic*] privacy concerns." Based on this, it is clear that the substance and intent of the letter was not to request access to information in accordance with LA FOIP. Rather, the letter was meant to outline privacy concerns, which in part raised concerns about a potential privacy breach involving the Applicant's personal information and sought out information about the R.M.'s privacy breach management process. Nowhere in the Applicant's letter is it clearly stated that they intended to make a request for access to information in accordance with LA FOIP.
- [14] Consequently, I find that the Applicant's letter to the R.M. in this case is not an *application* as per subsection 6(1) of LA FOIP. As such, I also find that the legal obligations normally

imposed on a local authority, in this case the R.M., when an *application* exists, are not engaged.

2. Does my office have jurisdiction?

[15] Since there is no *application* as per subsection 6(1) of LA FOIP, I find that I do not have jurisdiction to review matters related to an *application* pursuant to subsection 38(1) of LA FOIP.

[16] However, notwithstanding my finding in the preceding paragraph, the Applicant nonetheless wrote to the R.M. to outline their ongoing privacy concerns, which included concerns about a potential privacy breach involving the Applicant's personal information.

[17] The R.M.'s submission of November 28, 2018, did not indicate whether the R.M. took any actions to address the Applicant's privacy concerns. The submission focused on the fact that the Applicant's letter was not in their view a request for access to information. As such, it appears that the Applicant's privacy concerns have not been addressed by the R.M. since August 22, 2018.

[18] My office expects local authorities subject to LA FOIP to respond to privacy concerns submitted to them by individuals within approximately thirty days. The thirty-day deadline, while not specified in LA FOIP, provides local authorities a reasonable amount of time to conduct an internal investigation into an alleged privacy breach and respond to the individual making the allegation. After thirty days, if an individual has not received a response from a local authority, or is dissatisfied with the response received, an individual may submit an application for review to my office as per subsection 38(1)(a.4) of LA FOIP. My office alternatively could undertake a privacy breach investigation pursuant to section 32 of LA FOIP.

[19] On October 3, 2018, the Applicant informed my office through written correspondence that the R.M. had not responded to their letter. The R.M. is considered a local authority pursuant to subsection 2(f)(i) of LA FOIP and as such has obligations to protect personal information

in its possession or control in accordance with LA FOIP. Therefore, I find that I have jurisdiction to conduct an investigation pertaining to the privacy concerns outlined in the Applicant's letter to the R.M. My office will be proceeding with initiating an investigation in this regard and will provide notices of its intention to investigate to both the R.M. and the Applicant.

IV FINDINGS

[20] I find that the Applicant's letter to the R.M. in this case is not an *application* as per subsection 6(1) of LA FOIP.

[21] I find that the legal obligations that are normally imposed on a local authority, in this case the R.M., when an *application* exists, are not engaged.

[22] Since there is no *application* as per subsection 6(1) of LA FOIP, I find that I do not have jurisdiction to review matters related to an *application* pursuant to subsection 38(1) of LA FOIP.

[23] I find that I have jurisdiction to conduct an investigation pertaining to the privacy concerns outlined in the Applicant's written letter to the R.M. and will proceed with initiating an investigation in this regard.

V RECOMMENDATION

[24] I recommend that the R.M. take no further action as it relates to subsection 6(1) of LA FOIP, but I encourage the R.M. to begin assessing whether a privacy breach occurred by conducting an internal investigation based on the Applicant's privacy concerns.

Dated at Regina, in the Province of Saskatchewan, this 8th day of January, 2019.

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