



REVIEW REPORT 278-2019

Resort Village of Candle Lake

July 30, 2020

Summary:

The Resort Village of Candle Lake (RVCL) received a request for records from the Applicant, who is also a councillor. RVCL responded advising that some of the records they were seeking were subject to exemptions under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and requested the application fee to process the request. After the Applicant provided the application fee, RVCL indicated that clarification was required pursuant to section 6 of LA FOIP and requested the request for records be submitted on a prescribed form. The Commissioner found that the Applicant's request qualified as a request pursuant to LA FOIP and that clarification requested pursuant to section 6 of LA FOIP was not appropriate as sufficient detail was provided to process the request. The Commissioner recommended RVCL develop and implement a policy or procedure for the processing of requests for records and that the Applicant's request be processed within 30 days of the issuance of this Report.

I BACKGROUND

[1] On May 9, 2019, the Applicant emailed the Resort Village of Candle Lake (RVCL) requesting:

Please provide me with a true copy of all documentation relating to cheque 11701 to [name of payee] in the amount of \$7,276.99. Please include the invoice for that amount, a copy of the cheque, and the council resolution authorizing the engagement and any retainer agreement connected with the [name of payee] payment...

[2] On May 10, 2019 the Applicant emailed RVCL again:

Please add to my request list a copy of the audio record/recording from the May 10th council meeting. You can put this on a USB stick for me or alternatively email it to me at [email address of Applicant]. Please attend to this as soon as possible as I need to review the transcripts for possible review by the Court. Please acknowledge and advise by phone or email when the documentation and the USB stick if that is the option, so I can pick these up...

[3] In a May 13, 2019 email to the Applicant, RVCL stated:

You had indicated in your email you would like either an audio copy on a USB or alternatively an emailed version. I have attempted to attach the audio of the May 10th meeting to this email. However, the file was too large...

The other request you referred to I can only assume was for a copy of the invoice and payment to [name of payee]. Pursuant to Section 117(1)(a) of *The Municipalities Act*, the account has not been paid so I am not obligated to produce a copy of the account until that time. I did have the invoice at the meeting for inspection but as you know the meeting adjourned prior the Financial Report and Accounts Payable being approved by Council.

...We are doing our best to accommodate your requests as well as the requests from all member of Council in accordance with the guidelines and provision set out in *The Municipalities Act*...

[4] In a handwritten letter to RVCL dated May 23, 2019, the Applicant requested:

Please provide me with a true photocopy of the:

(i) Cheque 11701 for \$7,276.99

(ii) a copy of the account for 7,276.99 [name of payee] serviced (see s. 117 [*The Municipalities Act*])...

(iii) any letter that came with the account

(iv) any [correspondence]* between the RVCL Staff and or members of council in relation to the payment and/or account

*Correspondence to include emails, memo and notes

[5] In a letter dated May 23, 2019, RVCL responded to the Applicant stating:

Some of information being requested may be subject to exemptions under [*The Local Authority Freedom of Information and Protection of Privacy Act*] LA FOIP. Therefore,

please provide the required \$20 fee prescribed for a formal LA FOIP request. This request will then follow the formal process of an LA FOIP request.

[6] On May 24, 2019, RVCL provided the Applicant with a receipt indicating it had received the \$20 LA FOIP application fee by debit.

[7] In a letter dated May 30, 2019, RVCL advised the Applicant that:

Further to our request for documents made May 23rd, 2019, pursuant to section 6(1) of *The Local Authority Freedom of Information and Protection of Privacy Act*, we are requesting your application be remitted on the prescribed form. This would aid in clarifying your request in detail to enable the head to be able to process your request for accurately.

[8] On August 8, 2019, the Applicant requested my office conduct a review. On August 26, 2019, my office notified the parties of my intention to undertake a review.

II RECORDS AT ISSUE

[9] At issue, is whether RVCL appropriately requested clarification from the Applicant pursuant to subsection 6(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Therefore, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to conduct this review?

[10] RVCL qualifies as a local authority pursuant to subsection 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to undertake this review.

2. Does the Applicant's request for records qualify as an access to information request under LA FOIP?

[11] As outlined earlier in this Report, the Applicant had requested records from RVCL. Based on the nature of the records requested, RVCL notified the Applicant that their request would be processed pursuant to LA FOIP and requested the \$20 application fee. After providing the application fee, RVCL then informed the Applicant that their request would have to be submitted on the prescribed form in order to proceed with processing.

[12] Subsection 6(1)(a) of LA FOIP provides:

6(1) An applicant shall:

(a) make the application in the prescribed form to the local authority in which the record containing the information is kept; and

[13] *Guide to FOIP, Chapter 3* (updated March 10, 2020) at page 6 provides the following regarding section 6 of *The Freedom of Information and Protection of Privacy Act* (FOIP), which is the equivalent to the same section in LA FOIP:

An access to information request can be made on the prescribed form called Form A. It is located at Part II of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations). Access requests do not have to be made on Form A. An access request can be in the form of an email, but must include all the elements listed on Form A.

In determining whether applicants can deviate from using Form A, *The Legislation Act* establishes general rules that govern the interpretation of all statutory instruments in the province of Saskatchewan. It defines words commonly used in legislation. Section 2-26 provides:

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.

Section 2-26 of *The Legislation Act* provides that it is not mandatory for an individual to use the prescribed form (Form A) to make an application for access to information.

[14] In order to qualify as a request under LA FOIP, it is not required that the request be submitted on a prescribed form, provided it has all the required elements found on a prescribed form. RVCL clearly recognized the Applicant's email requesting records as a request under LA FOIP when it advised the Applicant it would be processed in that manner. Further, if RVCL did not intend to process the emailed request for records as an access to information request under LA FOIP, it should not have requested and accepted the Applicant's \$20 application fee.

[15] As such, I find that the Applicant's request qualifies as an access to information request pursuant to LA FOIP.

3. Did RVCL appropriately request clarification pursuant to subsection 6(1)(b) of LA FOIP?

[16] Subsection 6(1)(b) of LA FOIP is intended to ensure that applicants provide enough detail to make it possible for the local authority to identify the record being requested. Applicants must be clear and provide parameters (i.e. timeframe, place and event). Subsection 6(1)(b) of LA FOIP provides as follows:

6(1) An applicant shall:

...

(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.

[17] To support its position that clarification pursuant to subsection 6(1) of LA FOIP was required to process the request, RVCL's submission provided as follows:

As evidenced in the attached emails and notes, these requests seem to change each time they are made. That is the justification for an LAFOIP form being requested.

...

[The Applicant] sent an email to administration on May 9th, 2019 requesting various items including a copy of all documentation related to cheque 11701 to [name of payee] such as the resolution authorizing the engagement, any retainer agreement connected

with the payment, the invoice, copy of the cheque, etc. [The Applicant] wanted a hard copy put in [their] basket that same day.

...

The [name of payee] cheque was a payment related to legal fees incurred by the RVCL in a court application brought forward by Councilor [name of Applicant] against the Resort Village of Candle Lake as well as three Councilors who were listed individually in the application.

...

Some of the other documents requested may be subject to exemptions under LAFOIP and requesting that his request for documents me made in that manner with the \$20 prescribed fee. As Councilor [the Applicant] was the party on the other side of a lawsuit against the RVCL, any correspondence, emails, etc. between the RVCL and their lawyer representation may be subject to exemptions as [the Applicant] was acting on his own behalf and not as a member of Council for the RVCL.

On May 30, 2019, Mayor [name of Mayor], requested clarification pursuant to Section 6(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* and attached the prescribed form to aid [the Applicant] in this regard in an attempt to process the request for [sic] accurately.

...

The original request was for various documents, there has been different information and documents requested since the original request was made both to the Resort Village of Candle Lake and the municipality's solicitors by [the Applicant]. Because of the sensitive nature and exemptions that may apply to legal advice, etc. under section 21 of *The Local Authority Freedom of Information and Protection of Privacy Act*, we believe it is imperative for the request to be clearly defined by [the Applicant] as well as on the prescribed form. There is also the sensitive issue of [the Applicant] acting independently of Council in this regard as the opposing party to a court action.

- [18] Based on the emails between the parties, RVCL was able to reach the conclusion that the records at issue were subject to exemptions, including section 21 of LA FOIP; therefore, it appears it had sufficient information to identify what records the Applicant was seeking to enable them to determine if information in the records was subject to exemptions. Additionally, based on RVCL's submission, it does not appear there was anything about the request that it required clarification on to identify the records the Applicant was seeking, rather it appears the request for clarification was to prevent the scope of the Applicant's request from expanding. As such, I find that RVCL had sufficient detail to identify the records, the Applicant was seeking and there was no need to clarify pursuant to subsection 6(1) of LA FOIP.

[19] While I have found that the Applicant's request for records qualifies as a valid access request pursuant to LA FOIP, the Applicant also indicated in their submission that they believed the records should be available to the public pursuant to section 117 of *The Municipalities Act*. Additionally, the Applicant felt that as a member of council, they had the ability to access the responsive records pursuant to subsections 92(d) and 92(f) of *The Municipalities Act*. Those sections of *The Municipalities Act* provide as follows:

92 Councillors have the following duties:

...

(d) to ensure that administrative practices and procedures are in place to implement the decision of counsel;

...

(f) to maintain the financial integrity of the municipality;

...

117(1) Any person is entitled at any time during regular business hours to inspect and obtain copies of:

(a) any contract approved by the council, any bylaw or resolution and any account paid by the council relating to the municipality;

(b) the statements maintained by the administrator in accordance with section 142 and the debentures register;

(b.01) the official oaths or affirmations taken by members of council pursuant to section 94;

(b.1) the municipality's financial statements prepared in accordance with section 185 and auditor's report prepared in accordance with subsection 189(1);

(c) any report of any consultant engaged by or of any employee of the municipality, or of any committee or other body established by a council, after the report has been submitted to the council, except any opinion or report of a lawyer; and

(d) the minutes of the council after they have been approved by the council.

(2) Within a reasonable time after receiving a request, the administrator shall furnish the copies requested on payment of any fee that the council may fix.

(3) For the purposes of subsection (2), the fee set by council must not exceed the reasonable costs incurred by the municipality in furnishing the copies.

[20] This review is only considering whether or not the Applicant has made a valid access request and provided sufficient detail to process their request under LA FOIP. My office has not reviewed the record and not considered any exemptions under LA FOIP. Thus, I cannot comment on whether or not the requested records would be those available to the public or if exemptions pursuant to LA FOIP would apply to the records in full or in part.

[21] When processing requests for records, RVCL should note section 4 of LA FOIP which provides:

4 This Act:

(a) complements and does not replace existing procedures for access to information or records in the possession or under the control of a local authority;

(b) does not in any way limit access to the type of information or records that is normally available to the public;

...

[22] I note that in Review Report 122-2014, my office provided the following comments regarding records available to the public pursuant to subsection 117(1) of *The Municipalities Act*:

[19] Virtually all documents in the possession or control of a local authority could be said to be public records. A matter of public record for purposes of subsection 3(1)(b) of LA FOIP relates to documents that members of the public have ready access to. There is a statutory provision assuring public access to contracts once approved by council pursuant to subsection 117(1)(a) of *The Municipalities Act*. The Village has also already approved having the contract available to the public for viewing.

...

[21] If subsections 18(1)(c)(ii) or (iii) could be relied on by the Village than it would be preventing access to information in records that are normally available to the public pursuant to subsection 117(1)(a) of *The Municipalities Act* which would be contrary to subsection 4(b) of LA FOIP.

...

[23] In conclusion, I find that the Village cannot rely on subsections 18(1)(c)(ii) and (iii) of LA FOIP to withhold the record as this information is already made available to the public pursuant to subsection 117(1)(a) of *The Municipalities Act*.

[23] Additionally, in Review Report 075-2017 and 076-2017, my office recommended the local authority develop a policy that sets out what records a councillor is entitled to:

[26] The Applicant is a councillor. This means he is entitled to sit at each and every council meeting. As a councillor, he is entitled to participate in the discussion and to vote on decision items. In order to be a good councillor, the councillor needs access to records in the possession or control of the RM. I would have expected a councillor could ask for almost any record in the possession or control of the RM that relate to RM business except possibly those containing personal information of others. In our democratic process, those elected to public office need information...

...

[31] ...I recommend the RM develop a policy setting out what a councillor is entitled to request and receive in terms of records in the possession of the RM

[24] To ensure that RVCL is processing requests for records in a way that complements existing procedures for accessing information or records and does not limit access to records that are normally available to the public, as provided at section 4 of LA FOIP, I recommend RVCL develop and implement a policy/procedure for the processing of requests for records. The policy/procedure should include:

- what councillors are entitled to request and receive in terms of records in the possession of RVCL;
- what records are available to the public pursuant to section 117 of *The Municipalities Act*; and
- the steps to take when processing an access to information request under LA FOIP (including when clarification pursuant to section 6 of LA FOIP is necessary and that requests can be submitted in any written form, provided they have all the necessary elements).

[25] I recommend RVCL proceed with processing the Applicant's access to information request and issue a section 7 response within no more than 30 days of the issuance of this Report.

IV FINDINGS

[26] I find that the Applicant's request qualifies as an access to information request pursuant to LA FOIP.

[27] I find that RVCL had sufficient detail to identify the records the Applicant was seeking and has not appropriately requested clarification pursuant to subsection 6(1) of LA FOIP.

V RECOMMENDATIONS

[28] I recommend RVCL develop and implement a policy/procedure for the processing of requests for records. The policy/procedure should include:

- what councillors are entitled to request and receive in terms of records in the possession of RVCL;
- what records are available to the public pursuant to section 117 of *The Municipalities Act*; and
- what steps to take when processing an access to information request under LA FOIP (including when clarification pursuant to section 6 of LA FOIP is necessary and that requests can be submitted in any written form, provided they have all the necessary elements).

[29] I recommend RVCL proceed with processing the Applicant's access to information request and issue a section 7 response within no more than 30 days of the issuance of this report.

Dated at Regina, in the Province of Saskatchewan, this 30th day of July, 2020.

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