



REVIEW REPORT 284-2018

Town of Kindersley

November 12, 2019

Summary: The Applicant requested all information pertaining to correspondence to and from the Mayor and Council on the Guppy's carwash/water issues from the Town of Kindersley (the Town). The Town provided the Applicant with a response advising that there were no responsive records. The Applicant appealed to the Commissioner. The Commissioner found that the Town conducted a reasonable search and recommended that the Town follow proper procedures for providing responsive records to applicants.

I BACKGROUND

[1] On November 11, 2018, the Applicant made the following access to information request to the Town of Kindersley (the Town):

I would also like to Request the correspondence to and from the Mayor and Council for this FOIP.

[2] This request was based on a previous access to information request from the Applicant to the Town for:

I know we have received the information up to the last FOIP we did. Is it possible for you to provide me the more recent activity from August until current from administration and council for email and any communications on the Guppy's carwash/water issues.

[3] On November 14, 2018, the Town provided a response to the Applicant advising that there were no responsive records.

[4] On November 27, 2018, the Applicant requested that my office review the search performed by the Town.

[5] On December 18, 2018, my office notified both the Applicant and the Town that my office would be undertaking a review of the search.

II RECORDS AT ISSUE

[6] As my office is reviewing the Town's search efforts, there are no records at issue.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[7] The Town is a "local authority" pursuant to subsection 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Therefore, I have authority to conduct this review.

2. Did the Town conduct an adequate search?

[8] Section 5 of LA FOIP, establishes an individual's right to access records of a local authority, it provides:

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.

[9] Section 5 makes it clear that access to records must be granted if they are in the possession or under the control of the local authority subject to any applicable exemptions under Part III of LA FOIP.

[10] The threshold that must be met is one of "reasonableness". In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider

acceptable. LA FOIP does not require the local authority to prove with absolute certainty that records do not exist. However, it must demonstrate that it has conducted a reasonable search to locate them.

[11] A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.

[12] When conducting a review of a local authority's search efforts, details are requested that help my office understand the level of effort made to locate the records. Examples of the type of information that can be provided are found in my office's resource *IPC Guide to Exemptions for FOIP and LA FOIP*.

[13] In its submission, the Town advised that its Coordinator is responsible for managing the search efforts and initially determining the scope of the request and assessing which departments would likely have had responsive records.

[14] They also advised that paper records are kept in file folders in cabinets and either filed numerically or alphabetically depending on the types of records and may be stored in or on the desks of staff members. The Town did not provide my office with any information on which of the files were searched.

[15] Electronic files are located on a secured shared drive. The Town shared the list of file names on the shared drive with my office; however, did not state which files they searched. Staff members of each of the identified departments were asked to search through electronic and email records using search terms including, but not limited to:

- water,
- meter,
- bypass,
- valve,
- Guppy,

- Guppies,
- Guppy's,
- Canalta,
- Tim Horton's,
- Bylaw 05-18,
- Bylaw 16-09, and
- Review.

[16] The Town indicated that, as each staff member is aware of their own files and file practices, they are asked to search for responsive records and provide those records to the Coordinator.

[17] The Town indicated that the Coordinator has access to all email accounts and calendars, all filing cabinets and offices, all shared drive folders for both Council and Administration and that they personally searched all email strings and record retention sites and verified with each Council member they had not missed any records.

[18] The Town indicated to the Applicant that they did not identify any responsive records during this search and contacted them to clarify if there was a particular record that they were looking for. The Applicant was not able to provide them with any further information.

[19] In its submission provided to our office, it included correspondence where the Town discusses that all records have been provided to the Applicant with the exception of correspondence they were withholding, but did not advise the Applicant of the reasons for withholding the records. The Town submitted these records to my office for review. After reviewing these records, I find that the records in question were responsive to the access to information request and should have been provided to the Applicant with any applicable exemptions applied.

[20] After consultation with my office, the Town has since provided these records to the Applicant on October 8, 2019.

[21] The Town has indicated to my office that no further responsive records were identified during their search process. However, I recommend in future that the Town follow proper procedures for providing responsive records to applicants.

[22] I am satisfied that the Town has performed a reasonable search for responsive records.

IV FINDING

[23] I am satisfied that the Town has performed a reasonable search for responsive records.

V RECOMMENDATION

[24] I recommend in the future that the Town follow proper procedures for providing responsive records to applicants.

Dated at Regina, in the Province of Saskatchewan, this 12th day of November, 2019.

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