



REVIEW REPORT 288-2016

Town of Kindersley

February 23, 2017

Summary:

The Applicant submitted an access to information request to the Town of Kindersley (the Town). The Applicant contacted the Office of the Information and Privacy Commissioner (IPC) when he did not receive a response. Soon after contacting the IPC, the Applicant received a response. The Applicant was dissatisfied with the response. The IPC undertook a review. The IPC found that the Town did not respond within the legislated timeline and that it did not conduct an adequate search for records. However, the IPC found that the Town properly withheld some information in the records.

I BACKGROUND

[1] On October 28, 2016, the Town of Kindersley (the Town) received the following access to information request:

Copies of All Correspondence [sic], E-mail's, Letters, Faxes, applications, internal documents and decisions, notes, affidavits, memorandums and generally the records in your files regarding any complaints made against [the Applicant's name] and any related company of [the Applicant's name and name of businesses] in the town of kindersley's [sic] records dating back to October 1, 2015.

[2] On December 6, 2016, the Applicant requested a review by my office. He had not received a response from the Town.

[3] Through my office's early resolution process, the Town responded to the Applicant's request on December 20, 2016.

[4] The Applicant was not satisfied with the Town's response. Specifically, he was not satisfied with the time it took the Town to respond to his request, the information that was redacted from the records he received, and the Town's search efforts.

[5] On December 29, 2016, my office notified the Town and the Applicant that it would be undertaking a review.

II RECORDS AT ISSUE

[6] Most of the records provided to the Applicant were released in their entirety. Five pages of the records were partially redacted. These records relate to a complaint submitted to the Town through the "Report a Concern" form on the Town's website.

III DISCUSSION OF THE ISSUES

[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).

1. Did the Town respond to the Applicant's access to information request within the legislated timeline?

[8] Subsection 7(2) of LA FOIP requires local authorities to respond to access to information requests within 30 days after the request is made.

7(2) The head shall give written notice to the applicant within 30 days after the application is made:...

[9] In its submission, the Town admitted that its response to the Applicant was delayed. The Town eventually responded to the Applicant's access to information on December 20, 2016.

[10] I find that the Town did not respond to the Applicant's request within the legislated timeline.

2. Did the Town properly withhold personal information in the records?

[11] The Town withheld information that appeared on five pages of the records. It asserts that the information qualifies as personal information of another, other than the Applicant pursuant to subsection 23(1)(f), 23(1)(g), and 23(1)(k) of LA FOIP, which provides:

23(1) Subject to subsections (1.1) and (2), "personal information" means personal information about an identifiable individual that is recorded in any form, and includes:

...

(f) the personal opinions or views of the individual except where they are about another individual;

(g) correspondence sent to a local authority by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

[12] Two pages of the partially redacted records were submitted to the Town from the "Report a Concern" form on the Town's website. Another two pages were handwritten notes of a meeting with the person who submitted the concern. The fifth page of the redacted records was an email from the Municipal Enforcement Officer to the Town's Chief Administrative Officer regarding the concern. The name and other identifying information of the person who submitted a concern were redacted from these five pages.

[13] Based on a review of these pages, the redacted information qualifies as personal information, as defined by subsection 23(1) of LA FOIP. As such, I find the Town properly withheld the information pursuant to subsection 28(1) of LA FOIP.

3. Did the Town conduct an adequate search for records?

[14] The Complainant alleged that the Town did not conduct an adequate search for records. In a telephone call with my office on December 29, 2016, he indicated that there should be records resulting from a contractor who conducted an investigation. The Town's response to him did not include such records.

[15] My office requested the Town describe its search efforts so that my office can determine whether or not the Town made a reasonable effort to search for records. Public bodies can provide the following information in describing its search efforts:

- Outline the search strategy conducted:
 - For personal information requests – explain how the individual is involved with the public body (i.e. client, employee, former employee etc.) and why certain departments/divisions/branches were included in the search;
 - 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.

[16] 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.

[17] In its submission, the Town indicated there is a contractor that conducts inspections on behalf of the Town. It indicated that the Corporate Clerk was unaware of the requirement to search for records stored off-site by a contractor. It indicated that at the time of writing the submission, the records from the contractor had not been retrieved. It said that once it retrieved the records, it would make a decision as to whether it would disclose the records or if there is any legislative basis for denying access.

[18] I find that the Town did not conduct an adequate search for records that were stored off-site by a contractor.

- [19] In the course of this review, my office recommended that the Town retrieve responsive records related to the access request. Then, it should review and release as much information as it can to the Applicant within 30 days of receiving my office's draft report.
- [20] The Town indicated it would comply with this recommendation in a letter dated February 7, 2017. It said it had retrieved the records and that its intention is to release as much information as possible to the Applicant by March 1, 2017. It also indicated it will continue to review its processes so that off-site records would be searched when responding to access to information requests.
- [21] In terms of records stored internally, the Town's search strategy included contacting each department head to determine if each department has any records responsive to the request. In this case, the Town indicated that responsive records were held by the Communications Manager and within the Municipal Enforcement department and the Engineering Department.
- [22] The Communications Manager had responsive records because submissions made from the "Report a Concern" form on the Town's website are received by the Communications Manager. In this case, once the Communications Manager received the submission from the "Report a Concern", he contacted both the Municipal Enforcement department and Engineering Department.
- [23] The Municipal Enforcement department searched its shared drive, emails, and mobile device. It was able to provide emails and handwritten notes that were responsive to the request.
- [24] The Engineering department files its electronic and paper records based on civic addresses. The Town provided my office with a screen shot of the Engineering Department's folder on its shared drive for the address related to the Applicant's business address. The Town also indicated that the Engineering Clerk assisted the Town's Corporate Clerk in retrieving the responsive records in the Engineering Department.
- [25] I find that the Town's search strategy and its efforts in retrieving internal records were reasonable.

IV FINDINGS

- [26] I find that the Town did not respond to the Applicant's request within the legislated timeline.
- [27] I find the Town properly withheld the personal information pursuant to subsection 28(1) of LA FOIP.
- [28] I find that the Town did not conduct an adequate search for records that were stored off-site by a contractor.
- [29] I find that the Town's search strategy and its efforts in retrieving internal records were reasonable.

V RECOMMENDATION

- [30] I recommend that the Town follow through with its intention of releasing as much information as possible as described in paragraph [20].

Dated at Regina, in the Province of Saskatchewan, this 23rd day of February, 2017.

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