



REVIEW REPORT 311-2019

Rural Municipality of Blaine Lake No. 434

July 29, 2020

Summary:

The Rural Municipality of Blaine Lake No. 434 (the R.M.) received an access to information request for records related to an employee using the R.M.'s equipment for work done on their own land. The R.M. responded that responsive records did not exist. The Commissioner found that the R.M. conducted a reasonable search for records but did not meet legislated timelines. The Commissioner recommended that the R.M. develop written policies and procedures for responding to access requests, which the R.M. reported that it has done so since the commencement of this review. The Commissioner also recommended the R.M. examine ways to support the Administrator in meeting legislative timelines.

I BACKGROUND

- [1] On August 6, 2019, the Rural Municipality of Blaine Lake No. 434 (the R.M.) received an access to information request from two Applicants for bills or invoices for custom work done for an R.M. employee using the R.M.'s grader to “open for [their] cattle 3 years”.
- [2] On September 5, 2019, the R.M. responded to the Applicants indicating that it was seeking advice regarding third parties and personal information that might be involved with potential responsive records. The R.M. indicated that it would respond to the Applicants after the R.M. received the advice.
- [3] The Applicants requested a review by my office on October 4, 2019. As the result of early resolution efforts by my office, the R.M. provided the Applicants with a response on

October 29, 2019. At that time, the R.M. indicated that records responsive to the Applicants' request do not exist pursuant to 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[4] On October 30, 2019, the Applicants' requested that my office review the search efforts of the R.M. and whether it adhered to legislative timelines. On October 31, 2019, my office notified both the Applicants and the R.M. of my intention to undertake a review.

II RECORDS AT ISSUE

[5] As I am reviewing the search efforts of the R.M. and whether it adhered to legislative timelines, there are no records at issue in this review.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction in this matter?

[6] The R.M. is a local authority pursuant to subsection 2(f)(i) of LA FOIP. Therefore, LA FOIP applies and I have jurisdiction to conduct this review.

2. Did the R.M. meet legislated timelines?

[7] Subsection 7(2) of LA FOIP requires local authorities to respond to access to information requests within 30 days after the request is made. Subsections 7(2), (3), (4) and (5) of LA FOIP provide:

7(2) Where an application is made pursuant to this Act for access to a record, the head of the government institution to which the application is made shall:

(a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;

(b) if the record requested is published, referring the applicant to the publication;

(c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;

(d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;

(e) stating that access is refused for the reason that the record does not exist;

(f) stating that confirmation or denial of the existence of the record is refused pursuant to subsection (4); or

(g) stating that the request has been disregarded pursuant to section 43.1 and setting out the reason for which the request was disregarded.

(3) A notice given pursuant to subsection (2) is to state that the applicant may request a review by the commissioner within one year after the notice is given.

(4) If an application is made with respect to a record that is exempt from access pursuant to section 14, 20 or 21 or subsection 28(1), the head may refuse to confirm or deny that the record exists or ever did exist.

(5) A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.

[8] The access to information request was made to the R.M. on August 6, 2019. The response that was provided to the Applicants by the R.M. on September 5, 2019, did not comply with subsections 7(2) and (3) of LA FOIP.

[9] On October 29, 2019, the R.M. provided a response to the Applicants that was compliant with subsections 7(2) and (3) of LA FOIP, except for the fact it was issued 84 days after the access request was made.

[10] I find that the R.M. did not meet the legislative timelines in responding to the Applicants' request.

[11] In its submission, the R.M. indicated that its office moved in August 2019. It reported that it expected that the move would take one day; however, it took the R.M. three weeks to recover. It also indicated that it had other priorities at the time such as preparing the tax notices before the deadline of August 31, 2019.

[12] A local authority may extend the timeline to respond to access requests by 30 days, in certain circumstances, if it provides notice to the Applicant pursuant to subsection 12(2) of LA FOIP. In this case, no extension was given.

[13] During the review, the Administrator commented that they were new to the role and that the R.M. office had not been managed well in the past. As a result, the Administrator commented that they could not meet all the demands of the office.

[14] I recommend that the R.M. develop a written policy and procedure for responding to an access request and the timelines associated to ensure it complies with LA FOIP. The R.M. has since responded that it passed such a policy late last year, after my office commenced this review.

[15] I also recommend that the R.M. examine ways to support its Administrator in meeting the timelines set out in LA FOIP.

3. Did the R.M. conduct a reasonable search for records?

[16] Section 5 of LA FOIP is 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 LA FOIP.

[17] In the notification, my office requested that the RM describe its search efforts for the records in its possession or control that are responsive to the Applicants' request.

[18] 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.

- [19] 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.
- [20] 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 can be found in my office's *Guide to FOIP, Chapter 3* (updated March 10, 2020) at pages 65 to 69.
- [21] The Applicants allege that the R.M. employee in question admitted that they had used the R.M. grader for their own benefit and was paid by the R.M. while they did so. The Applicants allege that the employee in question indicated that they had permission from the R.M. to do so.
- [22] The R.M. submitted that the Administrator had a verbal conversation with the employee in question to ask them if they had ever paid the R.M. back for the use of the grader for personal gain or other costs associated with it. The employee in question indicated that they were told that the use of the grader for personal gain was not "a problem". The R.M.'s submission indicated that it was "not the first time that something has been 'okayed' verbally or 'with a smile and a handshake'". The R.M. also indicated that it was working to put policies and procedures in place to prevent these issues in the future.
- [23] The R.M. also provided my office with a submission that described its search. It noted that it began its search by checking the accounts payable and accounts receivable Munisoft software programs. It noted that a search of these two Munisoft software programs would indicate if there was a voluntary payment made without an invoice, or if there was an invoice that had not been paid by the employee in question.
- [24] The R.M. reported that it had been using the Munisoft software program for accounts payable since 2002 and for accounts receivable since 2016. Prior to that, it managed

accounts manually and the resulting information was stored in a binder. The binder was also searched for responsive records.

[25] The R.M. also indicated that it searched the employee's personnel file.

[26] Finally, the conversation between the R.M.'s Administrator and the employee in question indicates that the employee had not paid for the use of the grader.

[27] No records responsive to the Applicants' request were found.

[28] I am satisfied that the R.M. performed a reasonable search for records.

IV FINDINGS

[29] I find that the R.M. did not meet the legislative timelines in responding to the Applicants' request.

[30] I find that the R.M. performed a reasonable search for records.

V RECOMMENDATIONS

[31] I recommend that the R.M. develop a written policy and procedure for responding to an access request and the timelines associated to ensure it complies with LA FOIP.

[32] I also recommend that the R.M. examine ways to support its Administrator in meeting the timelines set out in LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 29th day of July, 2020.

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