



REVIEW REPORT 323-2019

Rural Municipality of Blaine Lake No. 434

July 30, 2020

Summary:

The Rural Municipality of Blaine Lake No. 434 (R.M.) received an access to information request for timecards and records about work done by an employee. The R.M. issued a fee estimate 112 days after receiving the request. The Commissioner found that the R.M. received an application, did not meet legislative timelines in responding to the request and did not issue a fee estimate within 30 days. The Commissioner recommended that the R.M. develop policies and procedures related to responding to access requests. The Commissioner also recommended that the R.M. rescind its fee estimate and issue a section 7 response to the Applicants within 14 days.

I BACKGROUND

- [1] On August 6, 2019, the Rural Municipality of Blaine Lake No. 434 (R.M.) received an access to information request for “grader maintenance employee time sheets – daily employee cards and daily road maps showing work done” from two Applicants.
- [2] On September 5, 2019, the R.M. replied to the Applicants indicating that it required clarification regarding the records requested and indicated that fees might be applied. Specifically, it wanted to know if there was a specific timeframe for the request.
- [3] On October 4, 2019, the Applicants contacted my office to request a review.
- [4] Over the next few weeks, through early resolution efforts, my office facilitated communication between the Applicants and the R.M.

[5] On November 27, 2019, the R.M. issued a fee estimate to the Applicants of \$1,462.50.

[6] On December 20, 2019, the Applicants specifically requested that my office review the fee estimate, the timeline in which the R.M. responded to the request and the need for clarification.

[7] On December 23, 2019, my office notified both the R.M. and the Applicants of my intention to undertake a review.

II RECORDS AT ISSUE

[8] As I am reviewing the fee estimate, the timeline in which the R.M. responded to the request and the need for clarification, there are no records at issue in this review.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction in this matter?

[9] The R.M. 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, LA FOIP applies and I have jurisdiction to conduct this review.

2. Did the R.M. receive an application pursuant to section 6 of LA FOIP?

[10] Section 6 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

(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.

(2) Subject to subsection (4) and subsection 11(3), an application is deemed to be made when the application is received by the local authority to which it is directed.

(3) Where the head is unable to identify the record requested, the head shall advise the applicant, and shall invite the applicant to supply additional details that might lead to identification of the record.

(4) Where additional details are invited to be supplied pursuant to subsection (3), the application is deemed to be made when the record is identified.

[11] On August 6, 2019, the R.M. received the access request. On September 5, 2019, the R.M. replied to the Applicants indicating that it required clarification regarding the records requested. Specifically, the R.M. wanted to know if there was a timeframe for the records the Applicants were seeking. The R.M.'s communication implied that fees might be applied if the clarification was not provided.

[12] The *Guide to FOIP, Chapter 3* (updated March 10, 2020) (Guide to FOIP), at page 9, states that where an access to information request is unclear or lacks sufficient detail to identify the record, the public body must provide the applicant with the opportunity to provide more detail. It also advises public bodies to contact the applicant to clarify the request as soon as possible and in particular, within 30 days.

[13] A January 2017 entry in my office's blog, *Clarifying Access Request vs. Narrowing the Scope: What they mean vs. What they want*, discusses the difference between clarifying and narrowing the scope:

If an access request is vague, the public body or trustee will generally need the applicant to provide additional details in order to identify the records they wish to obtain, which we refer to as clarifying. A request is only officially deemed to have been received once the necessary clarification has been provided. If the request is detailed enough to identify the records sought but there is a large volume of records, the public body or trustee may engage the applicant in an effort to identify the specific information they are seeking, this is referred to as narrowing the scope and doing so is entirely at the applicant's discretion...

[14] In that blog, our office considers two examples of requests that may be received and when clarifying versus narrowing may be appropriate. Clarifying a request pursuant to section 6 of LA FOIP may be necessary if the public body is not clear on what information or

records the Applicant is seeking based on the description provided. Whereas, requests that appear overly broad or would require a large undertaking to search may benefit from a discussion with the Applicant to determine if there is an opportunity to narrow the scope.

[15] My office's resource, *Understanding the Duty to Assist* provides:

The duty to assist requires a public body to make every reasonable effort to not only identify and seek out records responsive to an applicant's access to information request, but to explain the steps in the process and seek any necessary clarification on the nature or scope of the request within legislative timeframes. If the access to information request received seems overly broad, it may be because the individual does not have a sophisticated understanding of the public body's mandate and record holdings. Communicating with the applicant at an early stage and throughout the process, will not only help to clarify the request, but also hopefully streamline the search and preparation of records for release. Most importantly, meeting the duty to assist may result in a more satisfactory experience for all involved and perhaps, result in fewer complaints to this office.

[16] I encourage public bodies to communicate with the applicant when a request appears overly broad to determine if there is an opportunity to narrow or focus a request to assist the applicant in obtaining the records they are seeking. However, this should be presented as an option to the applicant, especially if a fee estimate will be involved. It should not be a requirement for processing a request and should not prevent the public body from processing the request if the applicant does not agree to narrow or focus their request. This should be done within the first 30 days of receiving an access request.

[17] In this case, from a review of the R.M.'s September 5, 2019 request for clarification, the R.M.'s response was clearly asking the Applicants if they wanted to narrow the scope of the request to a specific timeframe. There was no indication in that letter that the R.M. was struggling to identify which records the Applicants were seeking.

[18] However, during early resolution efforts by my office which commenced after the Applicants received the R.M.'s letter of September 5, 2019, the R.M. indicated that it required additional information to understand the request. Again, this requirement for additional details was not mentioned in its September 5, 2019 communication to the Applicant.

- [19] The Applicants claimed that, at the time the request was made, they verbally clarified what information they were seeking with an employee of the R.M. that was not responsible for processing requests. The R.M. has indicated that it did not receive the necessary clarification at that time. Given the contradictory accounts, I cannot determine what occurred.
- [20] On October 31, 2019, my office assisted the Applicants by providing addition details about the request to the R.M. The R.M. then issued a fee estimate to the Applicants on November 27, 2019.
- [21] However, in its submission dated January 17, 2020, the R.M. still indicated that the details provided were questionable, but did not indicate what steps it took to acquire more information from the Applicants. The R.M. indicated it did not know what “Grader Maintenance” meant and how it fit in to its public works job titles, which include foreman, grader operator, and maintenance.
- [22] Upon review, the letter the R.M. sent on September 5, 2019, to acquire more information from the Applicants, fell into the category of narrowing the scope of the request because it suggested that the Applicants constrict the request to a specific timeline. This letter did not seek further details required to identify the records sought.
- [23] The R.M. did not invite the Applicants to supply additional details that might lead to identification of the record pursuant to subsection 6(3) of LA FOIP. Therefore, I find an application was received pursuant to section 6 of LA FOIP.
- [24] I recommend that the R.M. develop and implement a policy or procedure that provides guidance on inviting applicants to supply additional details that might lead to identification of the record. The policy and procedures should highlight the difference between clarifying or narrowing the scope of a request in an effort to assist applicants and when clarification is required to identify records pursuant to section 6 of LA FOIP. The policy should also make it clear that this must be done within 30 days of receiving the access request.

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

[25] Subsection 7(2) of LA FOIP provides:

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

(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;

...

[26] I note that subsection 9(3) of LA FOIP provides that the time within which a local authority is to respond to an applicant's request pursuant to subsection 7(2) of LA FOIP is suspended when a local authority issues a fee estimate pursuant to subsection 9(2) of LA FOIP. The time is suspended until the applicant notifies the local authority that they wish to proceed with the request. Subsections 9(2) and 9(3) of LA FOIP provide:

9(2) Where the amount of fees to be paid by an applicant for access to records is greater than a prescribed amount, the head shall give the applicant a reasonable estimate of the amount, and the applicant shall not be required to pay an amount greater than the estimated amount.

(3) Where an estimate is provided pursuant to subsection (2), the time within which the head is required to give written notice to the applicant pursuant to subsection 7(2) is suspended until the applicant notifies the head that the applicant wishes to proceed with the application.

[27] The Guide to FOIP, at page 54, discusses the subsection in *The Freedom of Information and Protection of Privacy Act* (FOIP) equivalent to subsection 9(3) of LA FOIP. It indicates that:

...the 30-day deadline to respond to an access request is suspended once the fee estimate is sent and remains suspended until the applicant notifies the government institution that the applicant wishes to proceed with the application. When an applicant pays the 50% deposit referred to in subsection 9(4) of FOIP, this qualifies as an indication that he or she wishes to proceed. When the applicant indicates he or she wishes to proceed, the clock is no longer suspended and the government institution has whatever days are left within its original 30 days to complete the work and issue the response.

[28] As noted, the R.M. received the access to information request on August 6, 2019. Pursuant to subsection 7(2) of LA FOIP, the R.M. had 30 days to provide the Applicant with a response. If the R.M. had planned to provide a fee estimate, it was required to do so within 30 days of receiving the access request. It did not provide one until November 27, 2019, 112 days later.

[29] I find that the R.M. did not meet legislative timelines.

[30] 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. In Review Report 311-2019, I noted that the R.M. has passed such a policy, after my office commenced this review.

4. Is the R.M.'s fee estimate reasonable?

[31] LA FOIP allows for local authorities to charge prescribed fees. Section 9(2) of LA FOIP provides that the RM issue a fee estimate to the Applicant where the amount will exceed the prescribed fee of \$100. The fee estimate should be issued to the applicant within 30 days of receiving the access request, and before the written notice required by subsection 7(2) of LA FOIP is provided to the Applicant. Subsection 9(3) of LA FOIP provides:

9(3) Where an estimate is provided pursuant to subsection (2), the time within which the head is required to give written notice to the applicant pursuant to subsection 7(2) is suspended until the applicant notifies the head that the applicant wishes to proceed with the application.

[32] My office encourages public bodies to issue a fee estimate within the first three to 10 days of receiving an access to information request. That way, there is time remaining in the 30 day response period once an applicant indicates to the local authority that they wish to proceed with the request.

[33] In this case, the R.M. received the access to information request on August 6, 2019, and did not issue the fee estimate until November 27, 2019, 112 days later.

[34] If it was the R.M.'s intention to issue a fee estimate, it should have done so within 30 days of receiving the access to information request pursuant to subsection 9(3) of LA FOIP. After the 30 days elapsed, there is no other mechanism within LA FOIP that allows for the local authority to issue a fee estimate. Without a fee estimate, a local authority would be unable to charge fees for searching, preparation and reproduction.

[35] I find that the R.M. did not issue a fee estimate within 30 days of receiving the access request pursuant to subsections 7(2)(a) and 9(3) of LA FOIP. I recommend that the R.M. rescind the fee estimate it issued to the Applicants and issue a response to the Applicants that is compliant with section 7 of LA FOIP within 14 days.

IV FINDINGS

[36] I find an application was received by the R.M. pursuant to section 6 of LA FOIP.

[37] I find that the R.M. did not meet legislative timelines.

[38] I find the R.M.'s fee estimate was not issued within the timeframe indicated in subsections 7(2)(a) and 9(3) of LA FOIP.

V RECOMMENDATIONS

[39] I recommend that the R.M. develop and implement a policy or procedure that provides guidance on inviting applicants to supply additional details that might lead to identification of the record as described in this Report.

[40] 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.

[41] I recommend that the R.M. rescind the fee estimate it issued to the Applicants and issue a response to the Applicants that is compliant with section 7 of LA FOIP within 14 days.

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

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