



REVIEW REPORT 346-2019

Northern Village of Pinehouse

April 15, 2020

Summary: The Applicant requested a number of records from the Northern Village of Pinehouse (Village). The Village provided a response to the Applicant indicating that some records existed and other records did not. The Applicant requested a review by the Commissioner of the Village's search efforts. Upon review, the Commissioner found that the search conducted by the Village was adequate and reasonable for purposes of *The Local Authority Freedom of Information and Protection of Privacy Act*. The Commissioner recommended that the Village take no further action.

I BACKGROUND

[1] On October 4, 2018, the Northern Village of Pinehouse (Village) received an access to information request from the Applicant for:

I wish to obtain copies of the Northern Village of Pinehouse bylaws that established:

- a) Pinehouse Business North Development Inc. (about 1995-2007);
- b) Pinehouse Business North Limited Partnership (about 2012); and
- c) Pinehouse Housing Corporation (about 2014).

Also, please provide documents in each case showing that the Minister of Government Relations (or the corresponding minister responsible for municipal affairs in the day) gave his/her prior approval for these bylaws establishing municipal development corporations as laid out in Section 56(4) and (5) of the current Northern Municipalities Act (or prior such legislation).

[2] The Village responded to the request by a letter dated October 31, 2019, indicating that records responsive to (b) copy of bylaw that established Pinehouse Business North Limited Partnership; and (c) copy of bylaw that established Pinehouse Housing Corporation, do not

exist pursuant to subsection 7(2)(e) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Further, it advised that access to records responsive to (a) copy of bylaw that established Pinehouse Business North Development Inc. was granted in full.

[3] On November 10, 2019, my office received a request for review from the Applicant. The Applicant requested my office review the search efforts of the Village. Further, the Applicant raised that the record released in full was incomplete and *Schedule A* mentioned in the released portion was missing.

[4] During the early resolution phase of this review, my office was able to resolve the issue of *Schedule A* missing from the record. The Village acknowledged the oversight and provided it to the Applicant. My office confirmed with the Applicant that the remaining scope of the review was the search efforts for items (b) and (c) on the Applicant's access to information request.

[5] On November 13, 2019, my office notified the Village and the Applicant of its intent to undertake a review. My office requested the Village provide details of its search efforts.

[6] On December 8, 2019, my office received a submission from the Applicant. On December 11, 2019, my office received a submission from legal counsel representing the Village.

II RECORDS AT ISSUE

[7] There are no records at issue in this review. The Village asserted the records do not exist.

III DISCUSSION OF THE ISSUES

1. Does the Commissioner have jurisdiction to conduct this review?

[8] The Village is a "local authority" pursuant to subsection 2(f)(i) of LA FOIP. Therefore, the Commissioner has jurisdiction to conduct this review.

2. Did the Village conduct a reasonable search?

[9] Section 5 of LA FOIP provides an applicant the right of access to records in the possession or under the control of a local authority. Section 5 of LA FOIP 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.

[10] However, a local authority cannot provide access to records that do not exist. Subsection 7(2)(e) of LA FOIP contemplates such situations. This provision provides:

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

...

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

[11] LA FOIP does not require a local authority to prove with absolute certainty that records responsive to an access to information request do not exist. However, it must demonstrate that it has conducted a reasonable search to locate them.

[12] 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.

[13] 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. The submission to my office should outline the search strategy conducted which can include:

- For personal information requests – explain how the individual is involved with the local authority (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 local authority's control have been searched such as a contractor or information service provider.
- 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 IPC resource, *Using Affidavits in a Review with the IPC* available on our website.

[14] The above list is a guide. Each case will require different search strategies and details depending on the records requested and circumstances of the case.

[15] In the Applicant's submission, the Applicant pointed to section 56 of *The Northern Municipalities Act* (NMA) and asserted that section 56 required the Village to create the bylaws being requested, therefore the records should exist. The Applicant asserted the following:

...the Northern Village of Pinehouse claims that bylaws do not exist to support incorporation of two of their municipal development corporations. I can provide more accurate information on their dates of incorporation from ISC corporate registry records:

Pinehouse Business North Limited Partnership was registered 7 September 2012.

Pinehouse Housing Corp. was registered 10 July 2014.

...the Northern Municipalities Act, 2010, Part III, Division 6, lays out the process for incorporating municipal development corporations.

...I wish respectfully to submit that it beggars belief that the Northern Village of Pinehouse did not comply with the requirements of *The Northern Municipalities Act, 2010*, considering that they had in fact complied when Pinehouse Business North Development Inc. was incorporated back in 1998. With a certified municipal administrator in place, why would the Village not comply with legislative requirements in 2012 and 2014?

[16] In its submission, legal counsel for the Village asserted that the Applicant was incorrect in the interpretation of subsections 56(4) and (5) of NMA. Legal counsel for the Village asserted that Pinehouse Business North Limited Partnership was not a corporation but rather a limited partnership. Therefore, it asserted, the terms of the NMA applicable to a municipal development corporation were inapplicable. Lastly, it asserted that as a result, it was not surprising that a bylaw that established Pinehouse Business North Limited Partnership did not exist because it was not required by the NMA.

[17] With respect to a bylaw that established the Pinehouse Housing Corporation, legal counsel for the Village admitted it was less clear with respect to what the NMA required. It asserted that given the nature of its business, it was a controlled corporation (which did not have

specific requirements with respect to incorporation) as opposed to a municipal development corporation. However, it asserted, the focus for my office was to consider whether the Village conducted a reasonable search. Legal counsel went on to provide details of the Village's search for bylaws for both entities which included the following details:

- The Village Administrator searched the Village's bylaw register and bylaw index, which dates back to 1985.
- The bylaw register and bylaw index provide a complete listing of all bylaws passed by the Village.
- The Village Administrator has primary responsibility for these records so is familiar with the records requested.
- The Village Administrator located a responsive record with respect to part (a) of the Applicant's request. However, no responsive records were found for parts (b) and (c) of the Applicant's request.
- The search took approximately one hour.
- After the Applicant followed up, the Village Administrator spend an additional hour double checking the bylaw register and bylaw index, to confirm that nothing had been missed. No additional bylaws were found.
- The Applicant's request is confined to the bylaws of the Village and related documentation from the Ministry. Any and all bylaws of the Village are noted in the bylaw register and bylaw index, which classify all bylaws of the Village by both date and alphabetical order. These records are maintained in the Village office and were searched on two separate occasions.
- The search was detailed, taking an hour on each occasion.
- In the circumstances, there is little else that the Village could do to find records responsive to the Applicant's request.

[18] The NMA establishes what bylaws a local authority should create. However, what provisions apply to these entities and whether the Village has complied with those provisions is not the focus of this review. Rather, it is whether a reasonable search was conducted to locate the bylaws requested. As noted earlier, a local authority does not have

to prove with absolute certainty that records responsive to an access to information request do not exist. However, it must demonstrate that its search was reasonable.

[19] Based on what has been provided to my office, I find that the Village has demonstrated that its search for the requested bylaws was adequate and reasonable for purposes of LA FOIP.

IV FINDING

[20] I find that the search conducted by the Village was adequate and reasonable for purposes of LA FOIP.

V RECOMMENDATION

[21] I recommend the Village take no further action.

Dated at Regina, in the Province of Saskatchewan, this 15th day of April 2020.

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