



REVIEW REPORT 141-2015

Northern Village of Pinehouse

November 12, 2015

Summary: The Applicant submitted an access to information request to the Northern Village of Pinehouse (Village). The Village provided records responsive to the request and advised that other records requested did not exist. Upon review, the Commissioner found that the Village had conducted a reasonable search for records. The Commissioner recommended that the Village determine which records should be in its possession and/or control for future access to information requests.

I BACKGROUND

[1] On May 8, 2015, the Northern Village of Pinehouse (Village) received an access to information request from the Applicant for:

Correspondence, reports, memoranda and any other written documentation relating to Canada Revenue Agency's action against Pinehouse Business North Development Inc. (PBN) in 2009 – 2011 (dates uncertain) that resulted in freezing PBN's bank account and PBN's subsequent restructuring...

[2] The Village responded to the request by a letter dated July 7, 2015 indicating that the Village was subject to an evacuation notice due to forest fires in northern Saskatchewan. Further, the Village was denying access to the records pursuant to section 21 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] On July 21, 2015, my office received a Request for Review from the Applicant.

- [4] My office notified the Village and the Applicant of our intention to undertake a review on July 24, 2015. My office requested the Village provide a copy of the record and a submission that addresses section 21 of LA FOIP. A submission was received from the Applicant on August 8, 2015.
- [5] On September 23, 2015, the Village provided a response to my office indicating that it was prepared to release the record to the Applicant in the interest of an early resolution. The Village provided one document that it asserted was responsive to the access to information request. The document was a one page statement of account from the Canadian Revenue Agency (CRA).
- [6] My office proceeded to share the record with the Applicant who raised concerns that there was only one responsive record. At this point, the review shifted to a focus on the search efforts conducted by the Village. On September 23, 2015, my office requested details of the search efforts conducted by the Village by October 5, 2015.
- [7] On October 5, 2015, my office received an email from the Village indicating that a further search revealed 10 additional pages constituting four payments made to the CRA between 2009 and 2011. Again, these pages were provided to the Applicant who indicated he was not satisfied because the records were not what he had requested. The Applicant clarified for my office that he was interested in correspondence between the Village and the CRA that led to the Village's bank account being frozen. This was communicated to the Village.
- [8] On October 9, 2015, my office received 13 more pages constituting discrepancy notices, statements of account and GST arrears notices. The Village advised that it did not have any correspondence between itself and the CRA other than the records provided. Again, the Applicant was not satisfied. At this point, my office requested details of the Villages searches. These details were requested by October 19, 2015.
- [9] On October 19, 2015, my office received an email from the Village indicating that a further search found a letter making payment arrangements for the arrears of the GST

noted in the pages from October 9, 2015. The Village indicated it had searched an additional six hours. My office requested the Village search details and asked for permission to forward the last record to the Applicant.

[10] On October 22, 2015, my office received the Village's search details.

II RECORDS AT ISSUE

[11] The Village has asserted that no further responsive records exist within its possession and/or control. Therefore, the focus of this review is on the search efforts conducted by the Village.

III DISCUSSION OF THE ISSUES

[12] The Village is a "local authority" pursuant to subsection 2(f)(i) of LA FOIP.

1. Did the Village conduct a reasonable search?

[13] Section 5 of LA FOIP provides the right of access as follows:

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.

[14] Section 5 is clear that access can be granted provided the records are in the possession or under the control of the local authority. LA FOIP does not require a local authority to prove with absolute certainty that records do not exist. It must however, demonstrate that it has made a reasonable effort to identify and locate responsive records.

[15] A *reasonable search* is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request. 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.

[16] When providing details of search efforts to my office, generally, the details can include (non-exhaustive):

- 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.

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

[18] In its submission, the Village indicated that the relevant records for the years 2007 to 2011 are stored in six boxes and in various filing cabinets. The Village acknowledged that due to a number of moves and a corporate restructuring in 2012, the records for this timeframe are not well organized. For instance, all payment folders of Pinehouse Business North Development Incorporated (PBN) are found in folders stacked in cupboards, while other records are intermingled with those of the Village as the Village and PBN were not separate entities during this timeline. Further complicating the search is that it was unclear as to the year the accounts were frozen due to the continuance of payment of source deductions.

[19] I understand the circumstances that led to the above situation. The Village is indicating in its submission that at the present time the Village and PBN are two separate entities. This poses the question as to whether these records are even in the possession and/or

control of the Village. The Village is only obligated to provide the Applicant with copies of records that are in its possession and/or control subject, of course, to any applicable exemptions, at the time of the access to information request. The Village did not raise the issue of possession and/or control. Going forward, I recommend that the Village determine which records at the PBN it should have in its possession and/or control for future access to information requests (i.e. copies or originals should be retained by the Village where appropriate).

[20] According to the Village's submission, it employed the services of the Village Administrator and an assistant, as well as the Administrator for PBN to conduct searches. The Village explained that it was appropriate and necessary that these individuals conduct the search as they are familiar with the nature of the records requested.

[21] In its submission, the Village detailed the dates, times and length of each of the searches conducted. On 10 different occasions between September 7, 2015 and October 18, 2015, searches were conducted for various lengths of time ranging from one hour to nine hours. The total amount of time spent trying to locate responsive records was 31.5 hours. The Village explained that the result of these lengthy searches was additional records being located. All additional records located were provided to the Applicant in full. The Village asserted that this demonstrates the Village's desire to resolve the matter.

[22] In the Applicant's submission to my office, he asserted that he did not believe the Village had provided all of the responsive records. He asserted that the records he requested are within the statutory seven years generally accepted for retention of financial records. In addition, the Applicant pointed to the Village's original response to him which indicated it was relying on section 21 of LA FOIP to withhold records. The Applicant argued that this suggests other records exist. Some financial records have been provided to the Applicant. However, the Village has indicated it does not have any further records that would satisfy the portion of the Applicant's request for correspondence between the Village and CRA. Further, the Village solicitor confirmed for my office on October 28, 2015, that it had cited section 21 of LA FOIP in its original response to the Applicant because it expected any records responsive to the request to fall within that section. It

was not clear at the time because the Village had been evacuated due to fires in northern Saskatchewan. Upon the Village's return, more details were gathered and it was apparent that section 21 would not apply. The Village located a record and released it in full to the Applicant on September 23, 2015.

[23] In conclusion, I find that the Village has detailed its search efforts which appear to be quite substantial. The threshold that must be met is one of "reasonableness". Based on what has been provided to my office, I find that the Village has demonstrated that its search for records responsive to the Applicant's access to information request was reasonable and adequate for purposes of LA FOIP.

IV FINDINGS

[24] I find that the Village has demonstrated that its search for records responsive to the Applicant's access to information request was reasonable and adequate for purposes of LA FOIP.

V RECOMMENDATIONS

[25] I recommend the Village determine which records currently in the physical possession of Pine House Business North Development Incorporated it should have in its possession and/or control for future access to information requests.

Dated at Regina, in the Province of Saskatchewan, this 12th day of November, 2015.

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