



**Ombudsman  
Saskatchewan**  
*Promoting Fairness*

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# Investigation Report

**Complaint about the Village of Hodgeville**



**June 2020**

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## **THE COMPLAINT AND THE ISSUES**

The complainant is a resident of the Village of Hodgeville. He complained to us about the village dramatically increasing the fees it charges to provide residents with copies of public municipal documents. He believes the reason for increasing the fees was to discourage him from requesting them. He also complained to us about the council's decision to ban him from the village office for harassing its staff. He alleges this was done without giving him any notice or any opportunity to respond to the allegations made against him.

We investigated the following issues:

1. Are the fees the council set for providing copies of municipal documents reasonable and in accordance with *The Municipalities Act*?
2. Was the council's decision to ban the complainant from the village office made fairly and in accordance with the law?

## **FEES CHARGED FOR MUNICIPAL DOCUMENTS**

### **FACTS**

As of January 1, 2016, the Village of Hodgeville's *Rates for Equipment and Other Services* policy set the rate for making copies of municipal documents at \$2.00 for meeting minutes, \$0.50 per sheet for other public documents, plus a \$20.00 administration fee.

On February 21, 2018, the complainant asked the then administrator for a number of documents, including the agenda for an upcoming meeting, the January 2018 council meeting minutes, a copy of the administrator's contract, and an invoice that had been approved to be paid by the council. The administrator told him that the council had decided that requests for municipal documents must be in writing.

On February 23, 2018, he wrote the village office to ask for the documents and to complain about the new rules:

When I asked who made this rule as it was never said at a Council meeting and didn't exist on Wednesday [the administrator] replied that any request had to be made in writing. No one called me to tell me of the change, they waited till I called them to get ready to pick up my photocopying.

I feel this is targeting me to limit my access to public information. As my eyesight is very limited and stops me from taking notes at a public meeting, I rely very heavily on these communications and public documents from the Village Office. I wait until they are approved at the

Village Council Meeting then I require them in writing afterwards so I can view them on my special equipment from the CNIB, at home.

On March 5, 2018, he sent a letter to the new administrator requesting several invoices, and meeting minutes showing the approval of the administration fees for services. He said:

You claimed that Council told you to charge an Administration Fee for any photocopying done at the Village Office, of which I did pay that day. As per our conversation of that day, please forward the minutes from the Council meeting where Council approved the Motion or Resolution to instruct you to charge an Administration Fee for photocopying and/or Administration Services

He referred the administrator to section 117 of *The Municipalities Act*, which governs the inspection of municipal documents.

On March 20, 2018, the administrator submitted a report to the council that stated (in part):

There are two more letters from [the complainant], as well as the email I sent him indicating when we would have his requests ready. Even though I have given him an answer regarding this, he continues to call the office three or four times a day, calling me a liar or the staff incompetent, or accusing us of mistreating handicapped people. I have stopped answering his phone calls as they are redundant – I have already given him an answer. I have the calls recorded if you would like to hear them.

According to the March 20, 2018 meeting minutes, a council member, who is also the complainant's spouse, voted against approving the administrator's report. According to handwritten notes submitted to us, the council member made a motion that the administrator should retain copies of the recordings in case they were needed later, but no one would second her motion, so the motion is not recorded in the meeting minutes.

The council passed a resolution at this meeting to approve amendments to *Policy 500 – Rates for Equipment and Other Services*. The costs for copying documents remained the same, but the administrative fee doubled. It stated "\$40.00 per hour – Minimum charge \$40.00."

## **ANALYSIS AND FINDINGS**

Section 117 of *The Municipalities Act* states:

117(1) Any person is entitled at any time during regular business hours to inspect and obtain copies of:

- (a) any contract approved by the council, any bylaw or resolution and any account paid by the council relating to the municipality;
- (b) the statements maintained by the administrator in accordance with section 142 and the debentures register;
- (b.01) the official oaths or affirmations taken by members of council pursuant to section 94;

(b.1) the municipality's financial statements prepared in accordance with section 185 and auditor's report prepared in accordance with subsection 189(1);

(c) any report of any consultant engaged by or of any employee of the municipality, or of any committee or other body established by a council, after the report has been submitted to the council, except any opinion or report of a lawyer; and

(d) the minutes of the council after they have been approved by the council. the procedures respecting making and receiving complaints;

(2) Within a reasonable time after receiving a request, the administrator shall furnish the copies requested on payment of any fee that the council may fix.

(3) For the purposes of subsection (2), the fee set by council must not exceed the reasonable costs incurred by the municipality in furnishing the copies.

The documents the complainant requested (meeting minutes, accounts paid by the council and contracts approved by the council) are municipal documents available to the public. Under section 117, any person is entitled to inspect and obtain copies of these documents. Municipalities are obligated to allow any person to view this information at the counter. They may charge fees set by the council for providing copies of these documents as long as they do not exceed the reasonable costs of furnishing them.

The administrator told us the village fee structure was increased specifically in response to what she said was heightened demand for copies from the complainant. She told us the only requests that the village receives are from him, and since he was asking for potentially a dozen documents at a time, it was getting expensive to make the copies. However, she provided us with no evidence or context to support this contention. Instead, when we asked how the village decided to set the minimum \$40 fee, she told us "with the wages what they are today, we figured about \$40 per hour would cover my wages." However, she confirmed that she does not make \$40 per hour. When she was asked about this, she said, "no, but that is with benefits and other things."

In our view, the fee structure that the Village of Hodgeville has adopted is unreasonable and not in accordance with section 117 of *The Municipalities Act*.

First, there does not appear to be appropriate justification for the \$40 minimum fee. While the administrator says it was correlated with what she gets paid, it does not match her wages. The "benefits and other things" she referenced are fixed costs that do not change whether she has to look for files or not. In other words, they do not increase the village's costs of furnishing copies of municipal documents under section 117.

Second, since the Act does not provide for the village to charge fees to a person for simply inspecting documents but only for furnishing copies, we find it is unreasonable in most cases for it to charge an additional administrative fee for locating documents. Part of the role of the administrator is to maintain these records so that they are accessible. If they are difficult to find, or it is time-

consuming to retrieve them, then this is an issue for the council to address with the administrator.

We acknowledge that an additional administrative fee may be reasonable if the item being requested is, for example, historical in nature and stored off site. However, in this case, the complainant was seeking specific, current documents, which were, or should have been, readily available to the administrator. It does not appear that any extensive searching was required to find the specific documents. In other words, even if an administrative fee would be appropriate in certain circumstances, the village's implementation of it in this case was unreasonable. The policy indicates that there is a minimum of \$40 no matter how little effort and time is needed to locate and copy the document. The administrator did inform us that she would not charge this fee if the searching only took a few minutes, but she also said she would charge a person the administrative fee for searching for documents read at the counter, or copies sent electronically. Subsection 117(3) specifically states the fee must not exceed the reasonable costs incurred by the village to furnish the copies. Since the \$40 fee is not connected to the reasonable costs associated with complying with section 117 and is being charged in circumstances in which it is clearly unreasonable, we find the village is contravening the Act.

Third, the administrator admitted to us that the administrative fee was doubled solely in response to the complainant's requests. She told us it was because his frequent requests were taking up her time. In other words, the decision to increase the fees was to dissuade the complainant from asking for documents to which he and everyone else are entitled. Therefore, we find that the fees were increased for an improper purpose.

Fourth, since the complainant's visual impairment prevents him from viewing the information in the office and requires him to get copies in order to view them in his home on special equipment, increasing the administrative fees for furnishing him with copies could be seen as being improperly discriminatory – Not only was the decision made in response to the complainant's requests, it had a greater effect on him due to his disability.

## **BANNING THE COMPLAINANT FROM THE VILLAGE OFFICE**

### **FACTS**

The complainant's spouse is on the Village council. At its December 19, 2017 council meeting, the council decided to ban her from the village office, and to suspend her from attending the January 16, 2018 council meeting.

The complainant's spouse wrote a letter to the editor of *The Herald*, Herbert, Sask., was published on September 25, 2018. Among other things, she criticized an unnamed person whom she alleged vandalized her and the complainant's

business sign. The then mayor's response to this letter was published in the October 2, 2018 edition. In it, he stated:

For her to be bashing the very community that she represents seems somewhat disturbing...Perhaps that is why a petition was presented to Council in April of this year asking for her resignation. The petition was signed by 80% of the voters.

...

I am not sure why [the council member] has chosen to speak poorly of our Village. Perhaps if she and her husband did some soul searching they would realize why they have been targeted. If they really do feel unsafe maybe they should consider moving

[emphasis added.]

According to the administrator, the complainant was badgering her by calling repeatedly to, among other things, ask the same questions about the status of his document requests, despite her already giving him answers.

Then, according to the complainant, he and his wife went to the village office on September 25, 2018 to get an explanation for why the village had taken down their business sign, and to find out who ordered the employee who took it down to damage it. According to the administrator, the complainant accused her of defacing or knowing who defaced the sign belonging to the complainant's business. The complainant said there was a confrontation between staff and his wife who, still banned from the village office, was standing in the hallway outside of the entrance. Ultimately, village staff called the deputy mayor. The complainant told us he asked the deputy mayor to leave because he and his wife's issue was with the village and that it was a private matter. When the deputy mayor refused, the complainant refused to leave as well. The complainant told us that, after some length of time, the administrator told him they were closing the office, so he left. But the administrator, the deputy mayor, and the assistant administrator stayed in the office. The complainant then spent the next half hour yelling "I have another question" at the office before leaving.

On October 2, 2018, the administrator wrote to the former mayor and council, explaining the incident. The events outlined in the letter are substantively the same as was reported to us by the complainant. In this document, she cites the Village of Hodgeville's Harassment Policy, including the definition of harassment. Her report concludes: "As the Harassment Policy ensures that we will take all complaints of harassment seriously and that we are committed to prevent and stop harassment and create a productive and respectful workplace, I would ask that Council do something to stop this kind of behavior."

On October 16, 2018, after going *in camera* to discuss the administrator's letter, the council passed a resolution banning the complainant from the village office for harassing office staff.

In a December 17, 2018 letter, the complainant asked the council to reconsider this decision. He wrote in part:

I am requesting that you rescind motion 213/2018 on the grounds that I did not harass the Village of Hodgeville staff on the September 25, 2018 meeting at the Village office. My review of the recorded conversation once again confirms my position. However, the Village Council made this decision without ever asking for my side of the story nor was I given an opportunity to hear the accusations against me. ... Therefore, I am requesting that you...restart the...investigation.

Further to the lack of respect for my right to defend myself against such allegations, the question of Conflict of Interest for the Administrator is a significant factor in credibility of the Administrator's harassment claims. I am requesting copies of all correspondence regarding the claims made against me. It is my position that every time I ask the Administrator to be accountable for decisions she has made, she claims harassment. My belief is that the claims of harassment are overstated for the purpose of blocking transparency and accountability. [These] continued claims [have] been part of the excuse to ignore my phone calls, increase recommendations to increase photocopy rates to \$40/hr minimum charges, put my request in writing and wait up to 30 days for it to be processed, poor access handicap limiting stairs into the Village office, claiming harassment to Council and continue to block my access to the Village of Hodgeville administration by once again targeting my visual / hearing impairments and therefore preventing my access.

Further, and probably more importantly, in discussions with Municipal Affairs today, the Village has no such authority. I can only be banned from the Village Office by way of a Court Order, A Peace Bond, a Charge of Harassment by the Police. There is nothing in Legislation that supports a harassment charge through Council banning me from the Village Office.

The December 18, 2018 council meeting minutes indicate that the council received the letter as correspondence but took no other action. On January 4, 2019, the complainant sent a "Demand Letter" to the council demanding a response to his previous letter regarding being banned. The Council again received the letter at its January 15, 2019 meeting, but took no action.

## **ANALYSIS AND FINDINGS**

The village does not have a specific policy addressing how its staff should deal with visitors who are being unruly or difficult. When we asked, the administrator suggested the harassment policy applied. This policy is intended to address the village's responsibility under the *Saskatchewan Employment Act* to make sure, as far as is reasonably practicable, that its workers are not exposed to harassment with respect to any matter or circumstance due to the workers' employment.

Under that Act, harassment is any inappropriate conduct, comment, display, action or gesture by a person that either is based on race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin. It can also include an



interaction that adversely affects the worker's psychological or physical well-being and that the person knows or ought reasonably to know would cause a worker to be humiliated or intimidated, or conduct, comments, display, action or gesture that would be considered a threat to the health or safety of the worker.

We acknowledge that the village has a duty to ensure a harassment-free workplace and that this duty extends to ensuring its staff are not harassed by visitors. We also acknowledge that the village's harassment policy – though it is not worded as such – could be broadly interpreted to include harassment from citizens. However, since it focuses solely on harassment among village employees and officials it does not provide staff or the council with direction on how to reasonably deal with unruly visitors to the office. In our view, any process the village uses to address what it believes to be harassing or otherwise inappropriate behaviour of a visitor to its office needs to be fair.

Whenever a person's rights, interests or privileges will be affected by an administrative decision such as a decision to ban an individual from the village office, then the duty of procedural fairness is triggered.

The duty of procedural fairness is intended to ensure that administrative decisions are made using fair and open processes that are appropriate to the kind of decision being made in the context in which it is being made. The duty of fairness ensures that people affected by administrative decisions have a reasonable opportunity to provide the decision maker with information they think is relevant, to put their views forward for consideration, and to have the decision maker fully and fairly consider what they have to say before making the decision.

Though each situation might require or allow for the decision-making process to vary and still be considered fair, generally a procedurally fair decision-making process includes the following elements:

**Reasonable Notice:** The person affected by a decision needs to be notified that the decision is going to be made and told what information it will be based on. Whether a notice is reasonable depends on the circumstances. How seriously will it affect the person? The more serious the consequences of the decision and the more complicated it is, the more notice is needed for it to be reasonable.

**The Ability to Respond:** Once the person has been given notice, he or she needs to be given an opportunity to review the information being considered and to give the decision-maker alternative or contrary information.

**Free from Bias:** The decision-maker needs to be impartial, free from bias and reasonably seen to be free from bias. Decisionmakers cannot have any real or apparent interest in the outcome of the decision. For example, a person who made an initial decision, cannot participate as a decision-maker in an appeal of that decision.

**Relevant Information:** The decision-maker should consider all relevant information and should not consider any irrelevant information.

**Adequate Reasons:** The person affected by a decision should be given adequate reasons for the decision, including, at a minimum, a statement of the decision, a summary of the information the decision-maker used to make the decision, and an explanation of how the decision-maker reconciled any contradictions in the information.

**Reviewable and Correctible:** All decisions should be correctible and open to review.

In this case, the complainant was not given any reasonable notice that the council intended to consider whether to ban him, any opportunity to present his version of events or to respond to the administrator's allegations, or to provide the council with his version of events or his perspective on what happened. While the deputy mayor was present for some of the goings-on and could verify – from his perspective – the administrator's version of events, it was neither fair nor reasonable for the council to make the decision without hearing from the complainant himself. We acknowledge that the complainant nevertheless took it upon himself to make a submission to the council about what happened after he had been banned, but the council took no other steps except to receive and file his correspondence. In other words, even though he asked the council to reconsider its decision, it did not. Further, the village has not provided him with any rationale for its decision to ban him.

Lastly, as a related aside, the tone and content of the former mayor's public retort to the complainant's spouse's letter to the editor is, in our view, some evidence that a reasonable person could conclude that the former mayor's personal feelings towards the complainant and his wife would affect his ability to participate in the council's decision to ban the complainant in an unbiased manner.

Therefore, we find that the village contravened its duty of fairness to the complainant.

In addition to being procedurally fair, administrative decisions must also be substantively fair. For a decision to be substantively fair, it must meet certain standards. Two standards that are relevant to this case are:

**Legal Authority:** administrative decision makers must have the legal authority to make the decision. *The Municipalities Act* does not give the village the specific statutory authority to ban members of the public from its offices. But subsection 4(3) makes it clear that, for the purpose of carrying out its powers, duties and functions, a municipality has the capacity, the rights, powers and privileges of a natural person. We acknowledge that municipalities have rights similar to other property owners and lessees that would support, for example, a refusal to allow members of the public into the office space behind the counter in a municipal office, or into an equipment shed that is only accessible to staff. Again, we also acknowledge that the village has duties to its staff under *The Occupational Health and Safety Regulations, 1996*.

**Not Oppressive:** Administrative decisions cannot be oppressive, meaning they should avoid creating unnecessary hardship for the person affected.

We acknowledge that when members of the public behave unreasonably in their dealings with village staff, their conduct can significantly affect the staff and the overall functioning of the office. Therefore, it is reasonable for the village to take appropriate action to manage the conduct of any visitor that negatively and unreasonably affects its staff or the functioning of its office. It is not reasonable, however, for it to respond to unreasonable behaviours with unreasonable behaviour of its own, or to take overly harsh steps under the pretense of curtailing the person's behaviour. In this case, at the administrator's behest, the council banned the complainant from the village office indefinitely. It did not warn him that if he continued to behave unreasonably, he would get banned, and it gave him no notice that he was getting banned. Also, it has not given him any indication when he can ask that the ban be lifted, or what he is expected to do before the village will consider lifting it.

In these circumstances, we find that the council's decision to ban him was overly harsh.

## **RECOMMENDATIONS**

We recommend that:

1. The Village of Hodgeville amend its *Rates for Equipment and other Services* to ensure the fees it charges for furnishing copies of municipal documents reflects its actual, reasonable costs of furnishing them so that it no longer contravenes section 117 of *The Municipalities Act*.
2. The Village of Hodgeville establish and follow a reasonable process for determining when an individual's access to the village office will be restricted due to unreasonable conduct that ensures:
  - a. Individuals are given reasonable notice (verbally or in writing) that the village is considering prohibiting or restricting them from a public building, a reasonable opportunity to respond to the information being relied on to make the decision, and an opportunity to correct their behaviour;
  - b. Any prohibition or restriction of an individual is reasonable in the circumstances of each case, is for a reasonable period, and is subject to being reviewed periodically and being lifted early in appropriate circumstances.
  - c. Each written notice of prohibition or restriction is clearly worded to address the specific circumstances, includes meaningful reasons for the decision to prohibit or restrict them, and explains the individual's opportunities to have the decision reviewed.

3. The Village of Hodgeville use a fair and reasonable process to review its decision to ban the complainant from the village office.

## RESPONSE TO DRAFT REPORT

On February 7, 2020, we sent a draft version of this report to the Village of Hodgeville for its review and asked it to make representations to us about the accuracy of our findings and the reasonableness of our recommendations.

On June 10, 2020, the village council advised us that it had met and discussed our report, and that at its May 2020 meeting, it made the following resolution:

THAT Council accepts the recommendations contained in the February, 2020 Ombudsman draft report – Referred to as their file 18-54456; and the Administrator will send a response to the Ombudsman detailing our actions.

The village council also advised us that it made a resolution at its April 2020 council meeting to revise *Policy 500 Rates for Equipment and other Services* by removing the \$40 administration fee for providing copies of documents.

Regarding our recommendation that the village establish a process for determining when an individual's access to the village office will be restricted due to unreasonable conduct, the village advised us that it had "accepted the Saskatchewan Occupational Health and Safety Division's 3<sup>rd</sup> party Harassment Process Guide." This appears to be a reference to a sample harassment policy produced by the Occupational Health and Safety Division of the Ministry of Labour Relations and Workplace Safety in a 2016 guide called *Harassment Prevention: An employer's guide for developing a harassment policy*.

We acknowledge that the village has a duty to ensure a harassment-free workplace and that this duty extends to ensuring its staff are not harassed by visitors to the office. We also acknowledge that the sample harassment policy in the above guide includes useful information about how to investigate complaints of harassment. However, the intent of our recommendation was to encourage the village to adopt a fair and reasonable process to decide under what circumstances a person may be restricted from attending the village office due to their unreasonable behaviour. While workplace harassment as detailed in *The Saskatchewan Employment Act* and *The Occupational Health and Safety Regulations, 1996* is obviously an example of unreasonable behaviour, any process the village develops to implement our recommendation needs to provide staff and the council with direction on how to reasonably deal with all types of unreasonable conduct of visitors to the office, and describe the situations in which it may be appropriate to limit their access to the village office, and for what

period of time. Any process should include the elements set out in Recommendation #2.

Lastly, while the village has accepted our recommendation that it review its decision to ban the complainant from the village office, it did not advise us if had completed that review, or what decision it made based on the review.

Therefore, we intend to follow up with the village on its implementation of Recommendations 2 and 3.

## **REFERENCES**

### **STATUTES, REGULATIONS AND BYLAWS**

*The Municipalities Act*

### **POLICIES AND PROCEDURES**

*Policy 500 – Rates for Equipment and Other Services*

## ABOUT US

The Ombudsman is an independent officer of the Legislative Assembly of Saskatchewan. Under *The Ombudsman Act, 2012*, one of our roles is to investigate complaints about administrative actions and decisions of provincial ministries, agencies of the government, publicly-funded health entities, municipal entities, and their council members, board members, officers and employees. After an investigation, we can make recommendations to a government entity if the Ombudsman is of the opinion the government entity or officials:

- Have made a decision, an omission or a recommendation to a minister, or has acted in a way that appears to be: contrary to law; wrong, unreasonable, unjust, oppressive, improperly discriminatory, based on a mistake of law or fact; or was made or done in accordance with a law or a practice that is unreasonable, unjust, oppressive or improperly discriminatory.
- Have exercised a power, duty or function conferred or imposed on them by an Act for an improper purpose, on irrelevant grounds, or by taking into account irrelevant considerations.
- Should have given reasons for a decision, action, omission or recommendation that was the subject-matter of the investigation.

Ombudsman Saskatchewan does not advocate for the people who complain to us nor for the government entities and officials we investigate. We are neutral, impartial and independent from the government entities and officials we oversee. Our mission is to promote and protect fairness and integrity in the design and delivery of provincial and municipal government services.