



INVESTIGATION REPORT 035-2021, 036-2021

City of Melville

July 19, 2022

Summary: The City of Melville (City) received a complaint alleging two of its employees had inappropriately disclosed the Complainant's personal information. The City responded to the Complainant that no privacy breach had occurred. The Complainant was dissatisfied with the City's response and asked the Commissioner to investigate. The Commissioner found that a privacy breach occurred as the disclosure was unauthorized. The Commissioner recommended that the City review and revise its privacy policy to ensure that its staff receive privacy training and sign confidentiality agreements annually. The Commissioner also recommended that the City issue an apology letter to the Complainant.

I BACKGROUND

- [1] The Complainant is a previous employee of the City of Melville (City). On October 23, 2020, they contacted the City alleging that two of the City's employees disclosed their employment history with the City to other individuals, who then posted that information on a Facebook group.
- [2] On November 4, 2020, the City advised the Complainant it intended to appoint a third-party complaint investigator to investigate their complaint. The City explained this was to reduce a reasonable perception of bias and a potential conflict of interest.
- [3] On November 17, 2020, the City further informed the Complainant it had engaged DC Strategic Management (the external investigator) to investigate their privacy complaint.

The City's privacy officer also advised the Complainant of their right to request an investigation from my office.

[4] On February 9, 2021, the City provided the Complainant a copy of two investigation reports completed by the external investigator.

[5] On February 10, 2021, the Complainant asked my office to investigate the matter. On the same day, my office contacted the City and requested that it complete its investigation pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and provide a response to the Complainant accordingly.

[6] On February 17, 2021, the City responded to the Complainant indicating it had conducted two investigations pursuant to LA FOIP and its position was that no privacy breach had occurred.

[7] On March 16, 2021, the Complainant contacted my office and provided detailed concerns regarding both of the City's investigation reports. The Complainant indicated that they were still not satisfied with the City's response and requested that my office proceed with its investigation.

[8] On March 17, 2021, my office notified the City and the Complainant of my office's intention to undertake an investigation. My office requested a copy of the City's internal investigation reports regarding the matter. My office also invited the Complainant to provide any further details regarding the alleged breach of privacy.

[9] On March 22, 2021, the City provided copies of the two reports completed by the external investigators and two privacy questionnaires completed by the City Manager to my office. The Complainant did not provide any further information to my office.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[10] The City qualifies as a “local authority” pursuant to section 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this investigation.

2. Is the Complainant’s personal information involved?

[11] For LA FOIP to be engaged in a privacy breach, there must be personal information involved as defined by section 23(1) of LA FOIP.

[12] In this matter, the Complainant alleges their privacy was breached when City employees, without authority, shared their personal information with individuals external to the City, who in turn posted that information to Facebook during the week of October 18 to 24, 2020. With respect to what information was contained in the Facebook posts, the Complainant provided copies of the communication exchanges they had on Facebook with two relatives of a City employee (City employee A). These communication exchanges state:

a. Comment from relative 1 of City employee A:

- “When are all other Mayor and Counsel applicants going to start campaigning???? So far all I see is one candidate who was dismissed from the City of Melville campaigning.”

b. Response from the Complainant:

- “We, the residents of Melville will not be silenced by the people who choose to be disruptive, who tries to sabotage this campaign and who are out of touch with reality and the concerns of the residents. I am that voice for residents and businesses now and will be after the election. I am standing up for ALL residents of Melville because they matter, someone needs to care, CHANGE! CHANGE! CHANGE! That’s what we need and that’s what we will get. VOTE! Oct 31, 1-4pm, Nov 3 & Nov 5, 6-9pm and Nov 9, 8am – 9pm Community Works #residentsmytoppriority”

c. Another comment from relative 1 of City employee A, to another individual on Facebook:

- “We only know what CCR told us as we do all their courier. Apparently [they] tried denying permits for things to get started with the site preparation they had to [City Manager] and [City Manager] had to fix things as [they] has no authority to deny anything those are things for mayor and council to decide so the permits were put through and [they] overbilled them an outrageous amount and had to be refunded after [they] was gone. [They] was also let go from...”
- d. Multiple comments from relative 2 of City employee A as follows:
- “This is sad, to call residents of a city that you want to run “out of touch with reality” unfortunately the reality is that people of Melville don’t know the facts that this [individual] was “let go” from [their] position at the city that [they] only held for like 4 months but now apparently figures [they] can run the city???? I get Melville needs some change but this one is far from the answer. Go another 4 years with [name of someone]!!”...
 - “Rumor has it that this was part of the reason they “let you go” from your position. Also all you did was some of the paperwork on it (which was very incorrect as well). Mayor [individual name] and council were the backbone behind it all coming together.”
 - “.. [they] has no idea where I got my info from and [them] being “transparent” still has not revealed my questions of why [they] no longer works for the city...”
 - “... All I will say is I have the facts and if anyone would like to message me to get them, they can feel free to...”

[13] While the City did not in its submission address if the Complainant’s personal information is involved, information regarding an individual’s performance on the job and departure circumstances (“let go” and “dismissed”) from a local authority are considered their employment history as defined by sections 23(1)(b) and (k)(i) of LA FOIP, which provide as follows:

23(1) Subject to sections (1.1) and (2), “**personal information**” means personal information about an identifiable individual that is recorded in any form, and includes:

...

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

...

[14] As the Complainant's personal information is involved pursuant to sections 23(1)(b) and (k)(i) of LA FOIP, I find LA FOIP is engaged. The privacy rules outlined in Part IV of LA FOIP will guide this investigation.

3. Did the City have authority to disclose the Complainant's personal information?

[15] In my office's [Investigation Report F-2014-002](#) at paragraph [53], it was stated that to "disclose" means to share personal information with a separate entity that is not a division or branch of a local authority that has possession or control of that record or information. The Complainant alleged that their employment history was disclosed by a City employee outside the City. This would constitute a disclosure.

[16] Section 28(1) of LA FOIP establishes that local authorities, which includes the employees of the local authority, can only disclose personal information in its possession or under its control with the consent of the individual. To disclose an individual's personal information without consent, the local authority must have authority pursuant to sections 28(2) and 29 of LA FOIP. Section 28(1) of LA FOIP provides as follows:

28(1) No local authority shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates, except in accordance with this section or section 29.

[17] I previously found the Complainant's personal information, or what was posted about their employment history on Facebook, is involved in this matter. The Complainant alleges a City employee(s) provided this information to individuals external to the City, and that those individuals then made the Facebook posts.

[18] For its part, the City's position is that no employees were found to have disclosed the Complainant's personal information. The City's external investigator conducted investigations with two City employees, as well as with the two family members of one employee (City employee A). The City provided my office with copies of both

investigation reports. The reports outline the steps the external investigator took to conduct the investigations, who was involved in the investigations, and their findings.

[19] While the external investigator's reports did not conclude if a privacy breach occurred or not, their reports nonetheless laid out: 1) the details of the Complainant's departure that had been shared on Facebook and by whom; and 2) the connections between the two City employees in question and their relatives.

[20] As explained above, the Facebook posts contain the Complainant's employment history or personal information, which was known to the City employees who had a need to know that information. I also note that both relatives of City employee A indicated that they became aware of the Complainant's departure from the City, via "coffee row gossip/rumor" or sources other than their relative (City employee A). However, the Facebook posts themselves (see paragraph [12] of this Report) contain a fairly high level of detail regarding the Complainant's departure from the City as well as their job performance. While the Complainant could have shared some details with others, it seems more likely than not that someone within the City disclosed more sensitive details such as, for example, the Complainant's job performance on a project. I would not expect anyone who does not work for the City to know detail such as this. Therefore, I find that the City, disclosed the Complainant's personal information.

[21] As the City did not have the consent of the Complainant to disclose their personal information and the City has not provided its authority for such disclosure, I find a breach of privacy occurred. Therefore, I recommend that the City issue an apology letter to the Complainant.

III FINDINGS

[22] I find that I have jurisdiction to conduct this investigation.

[23] I find that the Complainant's personal information is involved pursuant to sections 23(1)(b) and (k)(i) of LA FOIP.

[24] I find that a privacy breach occurred.

[25] I find that the City did not show it had authority to disclose the Complainant's personal information.

IV RECOMMENDATIONS

[26] I recommend that the City review and revise its privacy policy to ensure that its staff receive privacy training and sign confidentiality agreements annually.

[27] I recommend that the City issue an apology letter to the Complainant.

Dated at Regina, in the Province of Saskatchewan, this 19th day of July, 2022.

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