Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 045-2023

Rural Municipality of Willow Bunch No. 42

August 28, 2023

Summary: The Rural Municipality of Willow Bunch No. 42 (RM) received a complaint alleging that the RM had inappropriately disclosed the Complainant's personal information. The RM did not agree that a privacy breach had occurred. The Complainant was not satisfied with the RM's response and asked the Commissioner to investigate. The Commissioner found that a privacy breach occurred as the disclosure by an RM Councillor was not authorized. The Commissioner recommended that the RM make a written apology to the Complainant. He also recommended that, within three months of issuing this Investigation Report, the RM develop policies and procedures for its administrative staff and councillors regarding the protection of personal information, authorized collection, use and disclosure of personal information and annual privacy training and how to respond to a privacy breach. Finally, he recommended that the RM, within 30 days of the issuing of this Investigation Report, develop procedures that if personal information protected under Part IV of *The Local Authority Freedom of Information and Protection of Privacy Act* needs to be dealt with by the RM's council, it is done in a closed meeting to the extent possible.

I BACKGROUND

[1] On November 14, 2022, the Complainant made a complaint to the Rural Municipality of Willow Bunch No. 42 (RM) alleging that it had breached their privacy by sharing their personal information with their spouse on October 24, 2022.

[2] The information at issue was contained in a letter addressed to the Complainant and signed by five RM councillors. The Complainant alleged that after the letter was introduced at an open meeting of council, the RM subsequently sent the letter via an internal government

mail service to their spouse at their place of work and by regular mail to their home address. The sender of the letter was not identifiable. The Complainant also alleged that the RM did not have the authority to share the letter with their spouse.

[3] In response to the complaint, the RM did an investigation and found that a named councillor (Councillor), "acknowledged and accepted responsibility for sending the letters to" the Complainant's spouse. The RM's investigation also concluded that the Councillor, "acted of [their] own accord without the knowledge or support of the rest of council." The Councillor did not apologize for the incident. Nor did the RM provide an apology.

[4] The Complainant was not satisfied with the response to his complaint and filed an Alleged Breach of Privacy Reporting Form with my office on February 15, 2023 asking my office to conduct an investigation under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[5] On March 9, 2023, my office sent a notice that it would be undertaking an investigation to the Administrator for the RM. In the notice, my office asked the RM to complete the Privacy Breach Investigation Questionnaire (Questionnaire). My office also asked the RM to explain how the Councillor acquired a copy of the letter and how and why it was delivered to the Complainant's spouse. In addition, my office asked how the named Councillor became aware of the spouse's work and home address.

[6] The same day, my office sent a notice of the investigation to the Complainant inviting them to provide a submission in support of the claim that a privacy breach had occurred.

[7] On April 10, 2023, the RM provided a copy of the Questionnaire. It also provided my office with copies of Minutes of Council meetings held on September 12, November 14, and December 12, 2022, and a two-page email dated March 1, 2023.

[8] On April 12, 2023, my office wrote to the RM seeking answers to specific questions about the circumstances surrounding the breach. The RM responded on April 21, 2023.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[9] The RM qualifies as a local authority pursuant to subsection 2(1)(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this investigation.

2. Is personal information involved?

[10] The privacy rules in LA FOIP only apply if the incident in question involves personal information as defined in subsection 23(1) of LA FOIP.

[11] The list of examples provided for at subsection 23(1) of LA FOIP is not meant to be exhaustive. This means there can be other types of information that could qualify as personal information (*Guide to LA FOIP*, Chapter 6, "Protection of Privacy", updated February 27, 2023, [*Guide to LA FOIP*, Ch. 6], at p. 39).

[12] The letter in question was addressed to the Complainant and delivered to them at an RM council meeting. It included a request by the signatories directed to the Complainant relating to an occupational health and safety complaint involving them. It also included the signatories' opinion of the Complainant.

[13] The RM did not dispute that the letter contained the personal information of the Complainant. I find that the letter was delivered by hand at an open meeting of council. It contained information that qualifies as the Complainant's personal information such as their name, information about a complaint involving them, and the views or opinions of the signatories about the Complainant and their role with the RM. It did not contain the Complainant's mailing address. The information qualifies as personal information pursuant to subsections 23(1)(b), (h) and (k) of LA FOIP.

[14] Subsequently, the Complainant's and their spouse's home address was used by the Councillor to deliver the letter to the spouse. The home address qualifies as the

Complainant's and their spouse's personal information pursuant to subsection 23(1)(e) of LA FOIP as the address was used in a personal context. The relevant subsections of section 23 of LA FOIP provide:

> **23**(1) Subject to subsections (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;
>
> …
> (e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;
>
> …
> (h) the views or opinions of another individual with respect to the individual;
>
> …
> (k) the name of the individual where:
>
> (i) it appears with other personal information that relates to the individual; or
>
> (ii) the disclosure of the name itself would reveal personal information about the individual.

[15] The spouse's work or business address was also used to deliver the letter to the spouse. However, the spouse's work address is the type of information that would appear on a business card, is publicly available on the place of business' website and does not qualify as personal information (*Guide to LA FOIP*, Ch. 6, p. 58). Nonetheless, as noted above, I find that personal information of both the Complainant and their spouse was involved.

3. Did a privacy breach occur?

[16] A privacy breach occurs when "personal information" is collected, used, and/or disclosed without authority under LA FOIP.

[17] The RM appears to take the position that it is not responsible for the actions of the Councillor who admitted sending the letter to the Complainant's spouse. As noted above,

in its Questionnaire it stated that the Councillor, "acted on his own accord without the knowledge or support of the rest of council." In the Questionnaire, the RM described the incident as an alleged breach of privacy.

[18] Consequently, before I consider if there was authority to share the letter, I must determine if the named Councillor and their actions are subject to LA FOIP.

[19] In my office's Investigation Report LA-2014-001, I stated that there are two circumstances in which a municipal councillor would be subject to the province's access and privacy laws: 1) if the councillor was acting as an "officer" of the city; or 2) if the records were found to be in the possession or under the control of the city. If the councillor was acting on behalf of a constituent, then the record would not be subject to access and privacy laws. This approach was recently followed by me in my office's Investigation Report 200-2019. I will take the same approach here.

Possession or Control

[20] I will first consider if the RM had possession or control of the letter. The RM's responses did not address this issue.

[21] "Possession" means having physical possession over a record plus a measure of control over it. The mere possession of a record is not enough, there must be some right to deal with the records and some responsibility for their care and protection. Control connotes authority. A record is under the control of a local authority when it has the authority to manage the record including restricting, regulating, and administering its use, disclosure, or disposition (*Guide to LA FOIP*, Chapter 1, "Purposes and Scope of LA FOIP", Updated March 7, 2023 [*Guide to LA FOIP*, Ch. 1], pp. 9-10).

[22] The RM had possession of the letter after it was presented at the September 12, 2022, council meeting. I must next determine whether it had a sufficient measure of control over the letter. To determine if a local authority has a measure of control both parts of the following two-part test must be met:

1. Do the contents of the document relate to a local authority matter?

2. Can the local authority reasonably expect to obtain a copy of the document upon request?

(*Guide to LA FOIP*, Ch. 1, pp. 10-12)

[23] With respect to part two of the test, all factors must be considered. These factors include:

- The substantive content of the record.
- The circumstances in which it was created.
- The legal relationship between the local authority and the record holder.

(*Guide to LA FOIP*, Ch. 1, p. 12)

[24] The reasonable expectation test is objective. If a local authority, based on all relevant factors, reasonably should be able to obtain a copy of the record, the test is met.

[25] The relevant circumstances surrounding the letter are as follows:

- The September 12, 2022 letter was signed by five of the RM's councillors.
- It relates in part to the RM's investigation into an occupational health and safety matter and human resources issues.
- The letter was given to the Complainant during an open council meeting on September 12, 2022.
- The letter was referred to in the minutes of the meeting and a copy was provided to the Administrator by the Councillor.
- The relevant passage from the minutes stated that a letter to the Complainant from members of council be added to the agenda.
- According to the RM, the letter was not read aloud at the meeting, but some councillors asked the Complainant questions about the contents of the letter. The Complainant did not answer any of the questions about the letter.
- The letter was sent to the Complainant's spouse at their work and home address by the Councillor and was received on October 24, 2022.

- During council meetings in November and December of 2022, the contents of the letter were made public.

[26] The letter was clearly in the possession of the RM effective September 12, 2022, after it was provided to the Administrator at the council meeting. Therefore, it was in the possession of the RM as of that date. It also relates to the Complainant's role with the RM and the RM's ongoing investigation into a human resources and occupational health and safety issue. *The Occupational Health and Safety Act, 1993*, (OHSA) applies to the RM in its capacity as employer. Section 3 of the OHSA states that employers shall, among other things, ensure the health, safety and welfare at work of all of the employer's workers. In these circumstances, I find that the contents of the letter relate to an RM matter and part one of the test has been met.

[27] I note that the RM's possession of the letter also arises from its requirement to maintain official records of council meetings. The letter directly related to the RM's powers and responsibilities under the OHSA. While the motives for writing the letter may be personal or political and are not at issue here, the subject matter of the letter directly relates to official RM business. There is no suggestion that the councillors were acting on behalf of their constituents in writing this letter. Given these circumstances, the letter is related to RM business and the RM could reasonably expect to obtain a copy of the document upon request but didn't have to as it already had a copy.

[28] For these reasons, I find that the RM had possession of the letter and a measure of control over it. Therefore, I find that the named Councillor's activities relating to the letter were subject to LA FOIP.

[29] Before I turn to consider if a privacy breach occurred when the named Councillor shared the letter with the Complainant's spouse, I will address the Councillor's decision to deliver the letter and add it to the agenda during an open council meeting and later the decision to make its contents public.

[30] Subsection 120(1) of *The Municipalities Act* (MA) gives the RM the discretion to close all or part of a meeting to the public in some circumstances. It provides:

> **120**(1) Subject to subsections (2) and (3), councils and council committees are required to conduct their meetings in public.
>
> (2) Council and council committees **may close all or part of their meetings to the public** if the matter to be discussed:
>
> (a) is within one of the exemptions in Part III of The *Local Authority Freedom of Information and Protection of Privacy Act*; or
>
> [Emphasis added]

[31] Subsection 15(1)(b) of LA FOIP is one of the exemptions included in Part III of LA FOIP and provides:

> **15**(1) A head may refuse to give access to a record that:
>
> …
> (b) discloses agendas or the substance of deliberations of meetings of a local authority if:
>
> (i) an Act authorizes holding the meetings in the absence of the public; or
>
> (ii) **the matters discussed at the meetings are of such a nature that access to the records could be refused pursuant to** this Part or **Part IV**.
>
> [Emphasis added]

[32] Subsection 15(1)(b)(ii) of LA FOIP points to Part IV of LA FOIP which deals with the protection of privacy. Reading subsection 15(1)(b)(ii) of LA FOIP along with subsection 120(2) of the MA, public meetings can be closed for the purposes of protecting personal information, as provided in subsection 28(1) of LA FOIP.

[33] While the MA provides the head of the RM with the ability to exercise discretion on whether to close a meeting, it would be a best practice for the RM to discuss matters involving personal information in a closed meeting. This approach was noted in my office's Investigation Report 349-2017 and subsequently cited with approval by the Court of Queen's Bench in *Maharaj v. Town of Rosetown,* 2020 SKQB 254. I recommend that the RM, within 30 days of the issuing of this Report, develop procedures that if personal information protected under Part IV of LA FOIP needs to be dealt with by the RM's council, it is done in a closed meeting to the extent possible.

[34] **"**Disclosure" is the sharing of personal information with a separate entity, not a division or branch of the local authority in possession or control of that information (*Guide to LA FOIP*, Ch. 6, p. 163).

[35] Subsection 28(1) of LA FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains to consents to its disclosure or if disclosure without consent is authorized by one of the enumerated parts of subsection 28(2) or section 29 of LA FOIP (*Guide to FOIP*, Ch. 6, p. 163).

[36] There is no suggestion that the Complainant consented to the disclosure of their personal information. Nor has the RM established that there was authority for the disclosure on any other basis. I find that there was a disclosure of the Complainant's personal information, and the disclosure was not authorized. This resulted in a privacy breach.

[37] As I have found that a breach of privacy occurred when the Councillor disclosed the letter to the Complainant's spouse, I recommend that the RM send a letter to the Complainant apologizing for breaching their privacy.

[38] As the RM did not accept that a privacy breach occurred, or was unsure if one had occurred, it did not follow best practices for responding to a privacy breach. As my office has now concluded its investigation into this matter, what remains outstanding is for the RM to take steps to prevent future breaches. The starting place is to have a process in place to investigate them. I therefore recommend that the RM develop policies and procedures to guide its staff on how to respond to a privacy breach when it occurs. Guidance on the best practices for responding to a privacy breach can be found in my office's *Guide to LA FOIP*, Ch. 6, at pp. 235-242.

[39] Pursuant to section 23.1 of LA FOIP, the RM has a duty to protect personal information. Subsection 23.1(a) of LA FOIP states:

> **23.1** Subject to the regulations, a local authority shall establish policies and procedures to maintain administrative, technical and physical safeguards that:

> (a) protect the integrity, accuracy and confidentiality of the personal information in its possession or under its control;

[40] Administrative safeguards are controls that focus on internal organization policies, procedures, and maintenance of security measures that protect personal information. Examples include written policies and procedures, annual training for employees, confidentiality agreements, agreements with information management service providers (IMSPs), auditing programs, records retention and destruction schedules, and access restrictions (*Guide to LA FOIP*, Ch. 6, p. 98).

[41] In response to questions posed by my office, the RM stated that it did not have any policies or training in place that would inform councillors and its staff of their responsibilities to protect privacy under LA FOIP. The RM also stated that some staff and councillors may have received training on these matters through municipal organizations such as the Saskatchewan Association of Rural Municipalities and the Rural Municipal Administrators' Association of Saskatchewan. The RM added that it did not believe that the named Councillor had received this type of training.

[42] It appears that one potential cause of the breach may have been a result of the named Councillor's lack of understanding or awareness of their obligation to protect personal information under LA FOIP. If the RM had policies and training in place to guide councillors and staff on the requirements to protect personal information and the authority to collect, use and disclose personal information set out in LA FOIP, it might have avoided this breach. I recommend that the RM develop policies and procedures for its administrative staff and councillors regarding the protection of personal information and the authority to collect, use and disclose personal information. I also recommend that the RM develop a policy requiring its staff and councillors to take privacy training annually.

III FINDINGS

[43] I find that I have jurisdiction to investigate this matter.

[44] I find that personal information is involved.

[45] I find that a privacy breach occurred.

IV RECOMMENDATIONS

[46] I recommend that, within 30 days of issuing this Investigation Report, the RM send a letter to the Complainant apologizing for breaching their privacy.

[47] I recommend that, within three months of the issuing this Investigation Report, the RM develop policies and procedures for its administrative staff and councillors regarding the protection of personal information.

[48] I recommend that, within three months of issuing this Investigation Report, the RM develop a policy requiring all staff and councillors to take privacy training annually.

[49] I recommend that, within three months of issuing this Investigation Report, the RM develop policies and procedures to guide its staff on how to respond to a privacy breach when it occurs.

[50] I recommend that the RM, within 30 days of the issuing of this Investigation Report, develop procedures that if personal information protected under Part IV of LA FOIP needs to be dealt with by the RM's council, it is done in a closed meeting to the extent possible.

Dated at Regina, in the Province of Saskatchewan, this 28th day of August, 2023.

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