Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 051-2023

Living Sky School Division No. 202

July 12, 2023

Summary: The Complainant was not satisfied with Living Sky School Division No. 202's (School Division) response to their privacy complaint, and asked the Commissioner to investigate. The Commissioner found that personal information is involved and that a privacy breach occurred. The Commissioner recommended the School Division apologize to the Complainant about this matter within 30 days of issuance of this Investigation Report.

I BACKGROUND

[1] By email of December 8, 2022, the Complainant sent a privacy complaint to Living Sky School Division No. 202 (School Division) on behalf of their child. In this matter, the Complainant (who is the parent) has authority to act on behalf of their child (less than 18 years of age) pursuant to subsection 49(d) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[2] The Complainant alleged that in email correspondence involving a School Division Superintendent (Employee 1) and Human Resources (Employee 2), private information about their child was shared that was not relevant to the situation being discussed.

[3] The Complainant did not receive a response to their complaint. Therefore, by email of January 12, 2023, the Complainant contacted my office to investigate this matter.

[4] Through my office's early resolution process, the School Division responded to the Complainant by letter dated March 22, 2023.

[5] On March 23, 2023, the Complainant advised my office they were not satisfied with the response received from the School Division.

[6] On March 28, 2023, my office notified the School Division and the Complainant that we would be investigating this matter.

[7] On May 6, 2023, my office received the School Division's investigation details.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[8] The School Division is a "local authority" pursuant to subsection 2(1)(f)(viii) of LA FOIP. Therefore, I find I have jurisdiction to undertake this investigation.

2. Did a privacy breach occur?

[9] In order for LA FOIP to be engaged, personal information as defined by subsection 23(1) of LA FOIP must be present.

[10] 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).

[11] "Including" means that the list of information that follows is incomplete (non-exhaustive). The examples in the provision are the types of information that could be presumed to qualify as personal information. However, more broadly, to constitute personal information, two elements must be present: 1) The information must be about an

identifiable individual; and 2) The information must be personal in nature (Guide to FOIP, Ch. 6, p. 39).

[12] In this matter, information at issue is contained in one email provided to my office by the Complainant between two School Division employees, dated September 26, 2021:

> …[Child] has a long history of conflict and has some mental health diagnosis.

[13] Based on the information before me, the statement that the child has a history of conflict, plus the statement that they have mental health issues could be an opinion about the child, or it could be a statement of something that is known about the child (e.g., that they have a mental health condition). It is also possible that including the child's name on its own could, in the given context, reveal something personal about them. These can all be defined as personal information pursuant to subsection 23(1)(c), (h), (k)(i) and (ii) of LA FOIP as follows:

> **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:
>
> …
> (c) information that relates to health care that has been received by the individual or to the health history 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.

[14] Therefore, I find that personal information is involved.

[15] When the Complainant sent their privacy complaint to my office on January 12, 2023, they outlined the following as their concern as it relates to this information:

> A complaint was made about me to a superintendent regarding a situation that occurred on a Saturday, Septenber [sic] 25th, 2021, at a [venue removed]. After pursuing an LA FOIP [request], I have recently received a document (December 16, 2022) where the superintendent, in correspondence with HR, shares private information regarding my [child's] medical information. This information was collected for the sole purpose of providing support and accommodations and is not relevant to this situation.

[16] In its March 22, 2023 response to the Complainant, the School Division has taken the following position:

> It is our belief that there was no breach of privacy. The issue is whether the information was improperly disseminated internally, and it was not.
>
> Under LAFOIP, sharing the information as we did would not constitute disclosure, but would be considered "use" of the information pursuant to s. 27. It was conveyed in an internal communication between two senior school division employees to provide context into an incident that had occurred, and was conveyed as part of an internal confidential request to ask that an HR investigation be commenced into the incident. No details beyond what appear in the sentence itself were disclosed, and these details were directly relevant to the situation and incident itself. The communication was not forwarded.

[17] A privacy breach occurs when personal information is inappropriately collected, used, or disclosed. In this matter, the child's personal information was shared in an email between two School Division employees. Therefore, the email shared between the employees constitutes a "use." "Use" indicates internal utilization of personal information by a local authority and includes the sharing of the personal information in such a way that it remains under the control of the local authority (*Guide to LA FOIP*, Ch. 6, p. 152).

[18] Section 27 of LA FOIP provides:

> **27** No local authority shall use personal information under its control without the consent, given in the prescribed manner, of the individual to whom the information relates, except:
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> (a) for the purpose for which the information was obtained or compiled, or for a use that is consistent with that purpose; or
>
> (b) for a purpose for which the information may be disclosed to the local authority pursuant to subsection 28(2).

[19] Section 27 of LA FOIP provides that a local authority needs the consent of the individual to "use" their personal information unless one of the above two enumerated circumstances exists (*Guide to LA FOIP*, Ch. 6, p. 150).

[20] From a review of the investigation details, the School Division did not have consent to use the child's personal information, therefore I must consider if it had the authority to use the information pursuant to subsections 27(a) or (b) of LA FOIP.

[21] In its investigation details, the School Division provided my office with the following explanation. This included the roles of those who sent and received the email:

> [Employee 1] is a Superintendent of Learning. [Employee 1] is the senior administrator to whom a public incident involving [Complainant] (a teacher), [child] and several students was reported.
>
> [Employee 2] was the HR Administrator who would be leading the investigation involving [Complainant].
>
> …
> It was necessary for HR … to investigate allegations of inappropriate behaviour of an employee, [Complainant]. [Complainant] is a teacher…. The matter came to the attention of [Employee 1], a superintendent. The incident occurred in [venue removed] in front of several members of the public.
>
> The incident also involved [Complainant]'s [child], and several other youth…. To help understand [Complainant]'s behaviour, it was necessary to provide some context for [Employee 2] … Being aware of the dynamic surrounding the incident would help [Employee 2] be more able to investigate the matter fully.
>
> There was no other email that mentioned [child]'s mental health status and long history of conflict.

[22] The Complainant asserts the information was not used for a consistent purpose for which the personal information was collected.

[23] From a review of the full September 26, 2021 email in question, I note Employee 1 sent the email to Employee 2 the morning after the incident occurred involving the Complainant. As a result of this incident, the School Division was taking steps to investigate the Complainant, who is a teacher.

[24] "Need-to-know" is the rule that personal information should only be available to those employees in an organization that have a legitimate need to know that information for the purpose of delivering their mandated services. The exercise of collecting, using, and disclosing personal information is always subject to the need-to-know principle (*Guide to LA FOIP*, Ch. 6, p. 23).

[25] "Data minimization" is the rule that an organization should always collect, use, and disclose the least amount of personal information necessary for the purpose. The exercise of collecting, using, and disclosing personal information is always subject to the data minimization principle. (*Guide to LA FOIP*, Ch. 6, pp. 24-25).

[26] The email includes enough detail to establish what happened and the actions taken by the Complainant without including the type of personal information about the Complainant's child that they did. The School Division has not demonstrated that it was necessary to do so in order to outline the details of the Complainant's actions and to initiate the investigation into them. By including these details in the email, the School Division did not adhere to the data minimization and need-to-know principles.

[27] In addition, the School Division did not advise my office which clause in section 27 of LA FOIP they were relying on to use this information about the Complainant's child in the email. The investigation was into the actions of the Complainant and not their child. Therefore, the alleged history of conflict and mental health diagnosis of the child are irrelevant at the point the email was sent.

[28] The School Division has not persuaded me that the inclusion of this information was necessary in order to initiate the investigation into the Complainant's actions. Because of this, a legitimate need-to-know did not exist. Therefore, I find a privacy breach occurred. I recommend the School Division apologize to the Complainant about this matter within 30 days of issuance of this Investigation Report.

[29] Data minimization and need-to-know are important principles in a local authority meeting its protection of privacy obligations under LA FOIP. As a best practice, the School Division

should review its policies and procedures related to the collection, use and disclosure to ensure they include guidance on data minimization and the need-to-know principles and educate staff on these changes. To assist, I would like to refer the School Division to the Privacy and Access in Saskatchewan Schools website. This website includes valuable information about the privacy of personal information, including appropriate uses of personal information.

III FINDINGS

[30] I find I have jurisdiction to undertake this investigation.

[31] I find that personal information is involved.

[32] I find a privacy breach occurred.

IV RECOMMENDATION

[33] I recommend the School Division apologize to the Complainant about this matter within 30 days of issuance of this Investigation Report.

Dated at Regina, in the Province of Saskatchewan, this 12th day of July, 2023.

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