



Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 224-2024

City of Saskatoon

December 24, 2024

Summary:

The Complainant was an employee of the City of Saskatoon (City). The City terminated the Complainant's employment. Some time later, the Saskatoon Civic Middle Management Association (SCMMA) and the International Federation of Professional and Technical Engineers (IFPTE) issued a press release regarding the termination of the Complainant's employment. Through the press release, the SCMMA and IFPTE indicated that there would be a press conference the following day regarding the matter. After the press conference, the City issued a statement to media regarding the matter. The City Manager also sent an email to the City's employees, Employee Family Assistance Program Officials and CUPE 59 regarding the matter. The Complainant filed a privacy complaint against the City regarding the release of their personal information. The City responded to the Complainant by asserting it had authority to disclose the Complainant's personal information pursuant to subsection 28(2)(s) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and subsection 10(g)(ii) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations). The Complainant was not satisfied by the City's response, so they submitted a complaint to the A/Commissioner. The A/Commissioner made a number of findings, including that subsection 28(2)(s) of LA FOIP and subsection 10(g)(ii) of LA FOIP Regulations authorized the disclosure of the Complainant's personal information as it had also abided by the data minimization principle. As such, he found a privacy breach did not occur. He also found that the City properly exercised its discretion to disclose the Complainant's personal information. He recommended that the City take no further action.

I BACKGROUND

- [1] On November 8, 2023, the Saskatoon Civic Middle Management Association (SCMMA) and the International Federation of Professional and Technical Engineers (IFPTE) issued a

press release, which called for “the reinstatement of a wrongfully fired city employee.” SCMMA and IFPTE identified the individual (Complainant) whose employment was terminated by the City. In the press release, SCMMA and IFPTE detailed how they believed the Complainant’s employment was terminated because the City took exception to the Complainant’s use of gender-neutral language. The press release included a quote by the President of the Saskatchewan Pride Network as saying that it is disheartening that the then-mayor of Saskatoon was condoning discriminatory practices at the City. SCMMA and IFPTE indicated that there would be a press conference held on November 9, 2023 at 11 a.m. where the Saskatchewan Federation of Labour President, the Saskatchewan Pride Network President, and the Complainant would be in attendance.

[2] The following day, on November 9, 2023, the City of Saskatoon (the City) issued a statement at 11:10 a.m. to the media regarding the matter. The media statement included the City’s reason for terminating the Complainant’s employment as well as the severance paid by the City to the Complainant.

[3] Also, on November 9, 2023, the City Manager sent an email at 1:48 p.m. to all City employees, the CUPE 59 Office and Employee Family Assistance Program officials with the subject line, “Message from the City Manager: Update on Labour Issue”. The email was about the termination of the Complainant. The email contained similar information as the media statement.

[4] On August 9, 2024, the Complainant’s legal counsel submitted a privacy complaint to the City regarding the disclosure of the Complainant’s personal information to City employees as well as to the media.

[5] On August 21, 2024, the City responded to the Complainant. The City asserted that subsection 28(2) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and subsection 10(g)(ii) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) authorized the disclosure of the Complainant’s personal information. Therefore, the City asserted its position that no privacy breach occurred.

[6] On September 18, 2024, the Complainant's legal counsel submitted a complaint to my office on behalf of the Complainant.

[7] On October 17, 2024, my office notified both the Complainant's legal counsel and the City that my office would be undertaking an investigation.

[8] On November 18, 2024, my office received submissions from both the Complainant's legal counsel and the City.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[9] The City qualifies as a "local authority" as defined by subsection 2(1)(f)(i) of LA FOIP. Therefore, I find that I have jurisdiction to conduct this investigation.

2. Did a privacy breach occur?

[10] A privacy breach occurs when a local authority collects, uses, and/or discloses personal information without authority under LA FOIP.

[11] In order to determine if a privacy breach occurred, I need to first determine if personal information is involved. If so, then I need to determine if the City collected, used, or disclosed the personal information. If so, then I need to do determine if the City did so with authority under LA FOIP.

a. Does this matter involve the Complainant's personal information?

[12] The City Manager's email and the City's media statement contained the reason the City terminated the Complainant's employment and the amount the City paid to the Complainant as severance. In my office's [Investigation Report 296-2017](#) at paragraphs [9]

and [10], I had found that the reason for employment termination qualified as “personal information” as defined by subsection 23(1)(b) of LA FOIP. Subsection 23(1)(b) of LA FOIP provides:

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;

[13] Regarding the amount paid by the City to the Complainant as severance, I should note that the list of examples of personal information set out in subsection 23(1) of LA FOIP is non-exhaustive. In my office’s [Review Report 173-2018](#) at paragraph [20], I had also found that severance amounts qualify as personal information pursuant to subsection 24(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP), which is similar to subsection 23(1)(b) of LA FOIP. I should also note that paragraph [15] of [Interim Order MO-2815-I](#) by the Ontario Office of the Information and Privacy Commissioner (ON IPC) described that the terms of a settlement qualify as “personal information” under Ontario’s *Municipal Freedom of Information and Protection of Privacy Act* (ON MFIPPA) as follows:

[15] Previous orders of this office have considered the contents of various types of agreements, such as employment contracts or settlement and/or severance agreements. These orders have consistently held that information about the individuals named in the agreements, which include, inter alia, their name, date of termination and terms of settlement, concern these individuals in their personal capacity and thus qualifies as personal information. I am satisfied that the same considerations apply in the circumstances of this appeal, and that the agreement contains the personal information of the affected person.

[14] Similar to my finding in [Review Report 173-2018](#) and to the ON IPC, I find that information such as severance paid to an employee qualifies as “personal information” as defined by subsection 23(1) of LA FOIP.

[15] Therefore, I find that this matter involves the Complainant’s personal information.

b. Did the City collect, use, and/or disclose the Complainant's personal information in this matter?

[16] To "collect" means to bring or come together; assemble; accumulate; obtain personal information from any source by any means (*Guide to LA FOIP*, Chapter 6: "Protection of Privacy", updated February 27, 2024 [*Guide to LA FOIP*, Ch. 6], p. 132). To "use" means to reference or manipulate personal information by the local authority that has possession or control of the information but does not include the disclosure to another separate entity (*Guide to LA FOIP*, Ch. 6, p. 153). To "disclose" means to share personal information with a separate entity that is not a division or branch of the local authority in possession or control of that record or information (*Guide to LA FOIP*, Ch. 6, p. 163).

[17] The City "used" the Complainant's personal information when the City emailed City employees explaining the reason for the termination of the Complainant's employment and the amount paid in severance as the Complainant's personal information remained in the possession or under the control of the City.

[18] Regarding Employee Family Assistance Program officials, the City explained in its submission that they are retained under contract to perform services for the City. Therefore, the Employee Family Assistance Program officials qualify as "employees" as defined by subsection 2(1)(b.1) of LA FOIP. The City then also "used" the Complainant's personal information when the City included Employee Family Assistance Program officials in the email.

[19] Further, the City "disclosed" the Complainant's personal information when it emailed the CUPE 59 Office the reason for the termination of the Complainant's employment and the amount paid in severance since the CUPE 59 Office is an entity separate from the City. The City also "disclosed" the Complainant's personal information when the City issued its media statement.

[20] Therefore, I find that the City used and disclosed the Complainant’s personal information in this matter.

c. Did the City have authority to use and disclose the Complainant’s personal information?

[21] Normally, I would analyze whether a public body had the authority to “use” personal information prior to analyzing whether it has authority to “disclose” the personal information. However, in this case, I will go straight to whether the City had authority to disclose the Complainant’s personal information for reasons that will be apparent later in this Report.

[22] In its response to the Complainant’s privacy complaint, the City cited subsection 28(2)(s) of LA FOIP and subsection 10(g)(ii) of the LA FOIP Regulations as its authority for having disclosed the Complainant’s personal information.

[23] In its submission, the City cited it was relying on subsection 10(g)(ii) of the LA FOIP Regulations and subsection 28(2)(n)(i) of LA FOIP as its authority for disclosing the Complainant’s personal information.

i. Subsection 10(g)(ii) of LA FOIP

[24] Subsection 28(2)(s) of LA FOIP provides:

28(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

...
(s) as prescribed in the regulations.

[25] Subsection 10(g)(ii) of the LA FOIP Regulations provides:

10 For the purposes of clause 28(2)(s) of the Act, personal information may be disclosed:

...

(g) **to any person** where the information pertains to:

...

(ii) the terms or circumstances under which a person ceased to be an employee of a local authority, including the terms of any settlement or award resulting from the termination of employment;

[Emphasis added]

[26] I set out the criteria for subsection 10(g)(ii) of LA FOIP in my office's [Investigation Report 296-2017](#) at paragraphs [16], [17], and [19] to [22] as follows:

[16] My office has not had the opportunity to consider subsection 10(g)(ii) of the Regulations in detail in the past. Further, it is a unique provision compared to similar access to information and privacy legislation across the country.

[17] In order to meet the criteria for disclosure, the personal information must either be:

- i) terms under which a person ceased to be an employee of a local authority; or
- ii) circumstances under which a person ceased to be an employee of a local authority.

...

[19] My office's view is that in the context of subsection 10(g)(ii) of the Regulations, "terms" means any contractual obligation of the local authority or the individual related to a termination of employment. This subsection also indicates that personal information can include the terms of any settlement or award resulting from the termination of employment.

[20] "Circumstances under which a person ceased to be an employee of a local authority" means something different. The Concise Oxford English Dictionary defines "circumstance" as "a fact or condition connected with or relevant to an event or action"....

[21] It is also important to note that this is a discretionary clause. In other words, even if the personal information in question meets the criteria set out in subsection 10(g)(ii) of the Regulations, the local authority is not obligated to disclose it....

[22] Finally, when relying on subsection 10(g)(ii) of the Regulations to disclose personal information, a local authority should respect the data minimization principle. The data minimization principle means that a local authority should always collect, use and/or disclose the least amount of personal information necessary for the purpose.

[27] In its submission, the City asserted the information it disclosed qualified as terms and circumstances under which the Complainant ceased to be an employee as follows:

1. To clarify the circumstances under which the Complainant was terminated, the City disclosed that [their] leadership style being incompatible with the City's values, was causing extensive workplace strife, and that [they] refused to change [their] approach despite numerous attempts by [their] supervisors. To address the Complainant's misinformation about discrimination, the City also identified its support of its LGBTQ2S+ staff.
2. To clarify the settlement terms and allegations of absence of due process, the City disclosed that the Complainant was given 18 months of severance, that SCMMA is asking that [the Complainant] be reinstated at [their] regular salary or receive the equivalent of 42 months severance. The City identified that it felt the union's request was unreasonable but that in respecting due process, the union could engage in arbitration.

[28] However, the Complainant's legal counsel argued that the City did not disclose the terms and circumstances under which the Complainant ceased to be an employee. Rather, the City disclosed "sensitive details of an active dispute" as follows:

3. The complainant acknowledges that the City may disclose the terms or circumstances under which they ceased to be an employee of the City of Saskatoon, including the terms of any settlement or award resulting from the termination of employment. That is, however, simply not what occurred in this instance. **In this case the City failed to use its discretion and disclosed sensitive details of an active dispute between the complainant and the City.** This information was shared, inexplicably, with all 4000 employees at the City of Saskatoon. There was absolutely no "need to know" this information by 4,000 employees of the City.

[Emphasis added]

[29] Earlier, I found that the Complainant's personal information is contained within the City Manager's email and the City's media statement. That is, it contains the City's reason for terminating the Complainant's employment. It also contains the amount paid by the City to the Complainant as severance. Both these types of information qualify as the terms and circumstances under which the Complainant ceased to be an employee of the City. While such information could also be "sensitive details of an active dispute" as described by the Complainant's legal counsel, the information still remains as terms and circumstances. Before I can conclude that subsections 28(2)(s) of LA FOIP and subsection 10(g)(ii) of the

LA FOIP Regulations authorized the disclosure of the Complainant's personal information, I need to consider the City's exercise of discretion and the data minimization principle.

[30] In my office's [Review Report 017-2023](#), the Saskatchewan Health Authority (SHA) had refused access to information in a record that was about the termination of an employment contract. I had found that the redacted information qualified as "personal information" as defined by subsection 23(1)(b) of LA FOIP. Therefore, I had found that the SHA properly withheld the information pursuant to subsection 28(1) of LA FOIP. However, I had also found that the SHA did not properly exercise its discretion pursuant subsections 28(2)(s) of LA FOIP and 10(g)(ii) of the LA FOIP Regulations. Therefore, I recommended that SHA reconsider the exercise of its discretion under subsection 10(g)(ii) of the LA FOIP Regulations to determine if it can release the information in the record to the applicant in that case.

[31] In this case, I must now determine if the City properly exercised its discretion when it decided to disclose the Complainant's personal information. In my office's [Review Report 173-2018](#), I cited some factors that should be taken into account when exercising discretion at paragraphs [31] and [32] as follows:

[31] A discretion conferred by statute must be exercised consistently with the purposes underlying its grant. **It follows that to properly exercise this discretion, the head must weigh the considerations for and against disclosure, including the public interest in disclosure** (*Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 at [46]). Some factors that should be taken into account when exercising discretion include:

- the general purposes of the Act (i.e. government institutions should make information available to the public, and individuals should have access to personal information about themselves);
- the wording of the discretionary exemption and the interests which the exemption attempts to protect or balance;
- whether the applicant's request may be satisfied by severing the record and providing the applicant with as much information as is reasonably practicable;
- the historical practice of the government institution with respect to the release of similar types of records;

- the nature of the record and the extent to which the record is significant or sensitive to the government institution;
- **whether the disclosure of the information will increase public confidence in the operation of the government institution;**
- the age of the record;
- whether there is a definite and compelling need to release the record; and
- whether the Commissioner's recommendations have ruled that similar types of records or information should be released.

[32] The Supreme Court of Canada in *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, (2010) SCC 23, confirmed the authority of the Information and Privacy Commissioner of Ontario to quash a decision not to disclose information pursuant to a discretionary exemption and to return the matter for reconsideration to the head of the government institution. The Court also considered the following factors to be relevant to the review of discretion:

- the decision was made in bad faith;
- the decision was made for an improper purpose;
- the decision took into account irrelevant considerations; or
- the decision failed to take into account relevant considerations.

[Emphasis added]

[32] In the quote of the Complainant's submission earlier, the Complainant's legal counsel asserted that the City "failed to exercise its discretion." I note that the City did not fail to exercise its discretion. Rather, it exercised its discretion in favour of disclosing the Complainant's personal information. I must determine if it exercised its discretion properly.

[33] In its submission, the City described the reason for its decision to exercise its discretion to disclose the Complainant's personal information as follows:

Later that morning, in response to the press release, the press conference and media inquiries, the City issued an internal statement to City employees and an external

statement to CUPE 59 and media outlets. The City acknowledged that it rarely publishes details about a termination but was concerned that misinformation was being spread. As a result of their concerns, the City used discretion under subsection 10(g)(ii) of the Regulations to disclose the two categories of personal information.

...

Re-affirming the City's decision to directly confront the misinformation and use their discretion to disclose the complainant's personal information under subsection 10(g)(ii) of the Regulations, later that day, the Saskatoon Star Phoenix published an article entitled 'Union claims City of Saskatoon employee was wrongfully fired for gender-neutral language'. In an interview for the article, the Complainant identified that [they were] fired for advocating for gender-neutral language in the workplace and that there was homophobia in the workplace. In the same article, Lori Johb, the President of the Saskatchewan Federation of Labour, reiterated that the Complainant's firing was unjust and without due process....

[34] In summary, the City's position was that "misinformation" was being spread, which prompted the City to disclose the Complainant's personal information to confront the misinformation.

[35] The SCMMA and IFPTE press release and the press conference attended by the Complainant are relevant considerations in the City's decision. In my office's [Investigation Report 092-2015 to 095-2015](#), I dealt with a case where a care aide's personal information had been disclosed by the President and CEO of a regional health authority to the media. However, I noted that the care aide had already spoken to the media and invited public attention to the matter. The disclosure by the President and CEO of the regional health authority, then, contributed to the public understanding of a debate that was of concern to the public. At paragraph [78], I said:

I note that in most cases, the disclosure of an individual's employment history should be presumed to be an unreasonable invasion of privacy. However, the circumstances of this case where the care aide invited public attention by speaking to the media about the reasons he believed were behind his suspension, made the care aide's employment history a matter of public interest, as described above in *Grant v. Torstar Corp* (supra).

[Emphasis in original]

[36] Similarly, the SCMMA and IFPTE press release and the subsequent press conference invited public scrutiny upon the City's practices. In other words, as a result of the press

release and the press conference, there was public interest in whether the City's termination of the Complainant's employment was discriminatory or not. Since there was public interest in this matter at the time of the disclosure, I find that the City properly exercised its discretion to disclose the Complainant's personal information.

[37] Now, I must determine if it abided by the data minimization principle in its disclosure. The data minimization principle is the rule that an organization should always collect, use, and disclose the least amount of personal information necessary for the purpose (*Guide to LA FOIP*, Ch. 6, p. 24).

[38] In its submission, the City said:

Because the Complainant had made public comments through press release and press conferences, which were being published by media, the only way to ensure the same audience was made aware about the City's refutation was through a media release.

The data minimization principle requires a local authority to disclose the least amount of personal information necessary for the purpose.

The City only used and disclosed the personal information necessary to address and rebut the Complainant's assertions of discriminatory practices and absence of due process. Although the City held more personal information about the Complainant relevant to her termination, only specific and necessary disclosures were made.

[39] The SCMMA and IFPTE identified the reason they believed the Complainant was terminated and described the Complainant as "wrongfully fired". The City disclosed the reason it terminated the Complainant's employment and the severance paid to the Complainant. Based on a review of the City's media statement and the City's email to CUPE 59, and keeping in mind that I am only considering the Complainant's personal information contained in the media release and email, I am satisfied that its disclosures were minimized to the amount of personal information necessary to rebut allegations made against the City. I find that the City abided by the data minimization principle in its disclosure of the Complainant's personal information.

[40] Since I have found that the City properly exercised its discretion and that it abided by the data minimization principle, I find that subsections 27(2)(s) of LA FOIP and subsection

10(g)(ii) of the LA FOIP Regulations authorized the disclosure of the Complainant's personal information. I recommend that the City take no further action.

[41] Regarding the City's "use" of the Complainant's personal information (that is, the City Manager's email to employees and Employee Family Assistance Program Officials), as it was disclosed with authority first, it was already in the public domain and therefore, in these circumstances could be shared internally for similar purposes. I, therefore, find that a privacy breach did not occur.

III FINDINGS

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

[43] I find that the City properly exercised its discretion to disclose the Complainant's personal information.

[44] I find that the City abided by the data minimization principle in its disclosure of the Complainant's personal information.

[45] I find that subsections 28(2)(s) of LA FOIP and subsection 10(g)(ii) of the LA FOIP Regulations authorized the disclosure of the Complainant's personal information.

[46] I find that a privacy breach did not occur.

IV RECOMMENDATION

[47] I recommend that the City take no further action.

Dated at Regina, in the Province of Saskatchewan, this 24th day of December, 2024.

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