



INVESTIGATION REPORT 227-2022

Rural Municipality of Pleasantdale No. 398

May 11, 2023

Summary:

The Complainant and their spouse had submitted a complaint against the Rural Municipality of Pleasantdale No. 398 (RM) with the Water Security Agency (WSA) regarding a drainage works issue. A meeting was set up at a site between the Complainant, their spouse, WSA employees, RM council members and an RM employee. Then, in the course of the meeting, the RM brought a ratepayer to the site. By doing so, the RM had revealed that the Complainant and their spouse were the ones who filed a complaint against the RM with the WSA. The Complainant submitted a privacy complaint with the RM, but they were dissatisfied with the RM's response. The Commissioner made a number of findings, including that a privacy breach occurred. The Commissioner recommended that the RM apologize to the Complainant for breaching their privacy, to revise its privacy policy, and to provide annual mandatory privacy training to its employees and council members.

I BACKGROUND

- [1] The Water Security Agency (WSA) has a [Request for Assistance Process](#) where a person can request assistance from the WSA if they are having a drainage works issue. The person, who would be the Petitioner and fill out a "[Request for Assistance Regarding Drainage Works](#)" form with information, including identify the Respondent as well as a description of the issue. According to WSA's website, the WSA will take steps to resolve the matter, including contacting the Respondent.
- [2] The Complainant filled out a "Request for Assistance Regarding Drainage Works" form and submitted it to the WSA. On the form, the Complainant had identified themselves and

their spouse as the “Petitioners” and identified the Rural Municipality of Pleasantdale No. 398 (RM) as the “Respondent”. The form was dated October 4, 2022.

[3] On October 12, 2022, the Complainant and their spouse met with two WSA employees at a particular site. Then, they moved to a second site. An RM councillor and the Reeve arrived at the second site. The RM’s foreman, driving an RM vehicle, arrived at the site with an individual (ratepayer). The ratepayer was the owner of the land where the meetings were taking place. By bringing the ratepayer to the second site, the ratepayer learned that the Complainant and their spouse were the ones who had filed a complaint against the RM to the WSA.

[4] On October 17, 2022, the Complainant submitted a privacy complaint to the RM. A portion of the privacy complaint was as follows:

There was no complaint filed against this ratepayer [name]. The complaint was filed against the RM of Pleasantdale No 398 for work that was done on the RM property which they did not have any permits for by the Water Security Act. There was no reason for the RM of Pleasantdale No 398 Foreman [name] to bring this ratepayer [name] to the next location as directed by the Reeve and the Division 3 Councillor to confront us and the Water Security employees.

These actions by the Reeve and Division 3 Councillor are a breach of our privacy and are inappropriate, unacceptable and unethical.

[5] On November 2, 2022, the Complainant and their spouse emailed the RM requesting the reason why their information regarding their WSA complaint was disclosed by the RM to another ratepayer and why the ratepayer was brought on site by the RM’s foreman.

[6] During the RM’s council meeting on November 15, 2022, council went *in-camera* to discuss the privacy breach matter. Council then passed a motion 522/22 indicating that the privacy complaint was not substantiated.

[7] The RM also had forwarded its investigation report to the Complainant where it says a privacy breach occurred but also that a privacy breach did not occur as follows:

Section 23 (1) (k); I find that Employee [REDACTED] is in contravention as the name of the complainants was disclosed to the ratepayer.

...

ASSOCIATED RISKS

Employee [REDACTED] did not action a privacy breach as it relates to associated risks.

- [8] On November 29, 2022, the Complainant contacted my office to indicate they were not satisfied with the RM's response to their privacy complaint.
- [9] On January 24, 2023, my office notified both the Complainant and the RM that it would be undertaking an investigation.
- [10] Before I proceed, I note that the Complainant's concern is regarding the RM's actions. The Complainant did not raise concerns regarding the WSA and its actions. Therefore, this Investigation Report is focused on the RM and its handling of the personal information in this case.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [11] The RM qualifies as a "local authority" pursuant to subsection 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Therefore, I find that I have jurisdiction to conduct this investigation.

2. Did a privacy breach occur?

- [12] A privacy breach occurs when "personal information" is collected, used, and/or disclosed without authority under LA FOIP. Before I proceed any further, I must determine if "personal information" is involved.

a. Is personal information involved?

[13] For LA FOIP to be engaged, there must be personal information involved as defined by subsection 23(1) of LA FOIP. Subsection 23(1) 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:

...

(f) the personal opinions or views of the individual except where they are about another 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] The Complainant submitted the “Request for Assistance Regarding Drainage Works” form to the WSA (not the RM). Based on a review of this form, I note it contains personal information as defined by subsection 23(1)(f) and (k) of LA FOIP about the Complainant and their spouse, including their names, contact information, and their personal view about the drainage works issue. I find that personal information is involved in this matter.

b. Does the RM have personal information in its possession or under its control?

[15] Earlier I noted that the focus of this investigation is on the RM’s handling of personal information, and not the WSA. Even though the Complainant submitted the form to the WSA, the WSA would have needed to disclose some of the Complainant’s personal information to the RM, such as their names and a description of their concerns, for the purpose of setting up the meeting that took place on October 12, 2022. Therefore, I find that the RM would be in possession of at least some of the Complainant’s personal information.

c. Did the RM disclose the Complainant's personal information to the ratepayer with or without authority under LA FOIP?

- [16] "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*, Chapter 6 "Protection of Privacy", Updated February 27, 2023 [*Guide to FOIP*, Ch. 6], p. 163).
- [17] Section 28 of LA FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains 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).
- [18] As summarized in the background of this Investigation Report, the Complainant's concern was regarding the RM's foreman bringing another ratepayer to the site. By doing so, the ratepayer learned that it was the Complainant and their spouse who had filed a complaint against the RM with the WSA. In its investigation report to my office, the RM said it could not determine if personal information was disclosed or not as follows:

Proceeding the conversation at the inspection location, municipal attendees left and went to next location on Grid [Number] Twp. Rd. [Number]. Employee [Employee #] left the location, went into the field where the [individual] was working. At that time the ratepayer and Employee [Employee #] had a verbal conversation; following that the ratepayer and Employee [Employee #] attended the location on [Number]. It was at this location that the ratepayer had a heated discussion with the Complainants, followed by a discussion with attending WSA officers.

As part of the investigation I contacted WSA officials; they indicated that indeed a conversation did transpire but at no time did the conversation sway from acts associated with the first inspection location, the conversation occur was on a public road. As the entire actioned activity was of a verbal nature it is difficult to determine of this sequence of events; **does that mean that information was or was not disclosed that I cannot determine.**

[Emphasis added]

[19] However, as summarized in the background of this Investigation Report, the RM had admitted that its employee disclosed the name of the Complainant to the ratepayer as follows:

Section 23 (1) (k); I find that Employee [REDACTED] is in contravention as the name of the complainants was disclosed to the ratepayer.

[20] Finally, and perhaps confusingly, in its description of the steps it took to respond to the privacy breach, the RM identified its authority to disclose personal information on a public road pursuant to subsection 28(2)(a) of LA FOIP. It said:

2. **Contain privacy Breach and recover information**
 - a. This stated breach was verbal in nature; information may have been taken from conversation between onsite attendees; this interaction took place on a public road. This would place it under LAFOIP Section 28 (2) (a).
 - b. No written records were disclosed.
 - c. No system was breached.
 - d. Breach did not contain personal health information
 - e. The breach was not caused by administrative controls of the municipality.

[21] Subsection 28(2)(a) of LA FOIP says the following:

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:

(a) for the purpose for which the information was obtained or compiled by the local authority or for a use that is consistent with that purpose;

[22] To be in compliance with subsection 28(2)(a) of LA FOIP, the disclosure of personal information must be only for the purpose for which the information was obtained or compiled or for a use that is consistent with that purpose. The purpose for which the RM obtained the Complainant's personal information was for the purpose of setting up the meeting that took place on October 12, 2022 between WSA employees and RM employees and council members. The RM has not demonstrated how subsection 28(2)(a) of LA FOIP authorized it to disclose the Complainant's personal information to the ratepayer. In other words, the disclosure does not appear to be for the purpose for which the information was obtained or compiled by the RM or for a use that is consistent with that purpose.

[23] I find that the RM has not demonstrated it had authority to disclose the Complainant's personal information to the ratepayer. I find that a privacy breach has occurred.

[24] Before I proceed, I note that the definition of "personal information" set out in subsection 23(1) of LA FOIP applies to information in recorded form. However, this does not mean that the RM is freely able to discuss personal information verbally in an unrecorded format. Section 23.1 of LA FOIP imposes a duty upon the RM to protect the personal information in its possession and under its control:

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;

(b) protect against any reasonably anticipated:

(i) threat or hazard to the security or integrity of the personal information in its possession or under its control;

(ii) loss of the personal information in its possession or under its control; or

(iii) unauthorized access to or use, disclosure or modification of the personal information in its possession or under its control; and

(c) otherwise ensure compliance with this Act by its employees.

[25] I find that the RM did not protect the Complainant's personal information pursuant to section 23.1 of LA FOIP by bringing a ratepayer to the meeting on October 12, 2022.

[26] I recommend that the RM send a letter to the Complainant to apologize for breaching their privacy.

3. Has the RM taken appropriate steps to prevent similar privacy breaches in the future?

[27] The most important part of responding to a privacy breach is to implement measures to

prevent future breaches from occurring (*Guide to LA FOIP*, Ch. 6, p. 243).

[28] In my office's [Investigation Report 234-2021](#), I had recommended that the RM implement a privacy policy that is compliant with its duty to protect personal information under section 23.1 of LA FOIP and ensure that this policy includes steps to handle a privacy breach appropriately. The RM complied with my recommendation and implemented Policy 491-22 regarding the duty to protect personal information pursuant to section 23.1 of LA FOIP.

[29] When providing materials to my office regarding the matter discussed in this Investigation Report, the RM provided my office with a copy of its Policy 491-22 to demonstrate it has implemented a measure to prevent similar privacy breaches.

[30] Policy 491-22 was already in place when the privacy breach discussed in this Investigation Report occurred. Therefore, I find that Policy 491-22 was not adequate in preventing the privacy breach from occurring. I recommend that the RM revise its policy to ensure that RM employees and council members only collect, use, and/or disclose personal information on a need-to-know basis in accordance with LA FOIP.

[31] I recommend that once the RM has revised its Policy 491-22 that the RM provide annual mandatory privacy training to its employees and council members.

III FINDINGS

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

[33] I find that the RM has not demonstrated it had authority to disclose the Complainant's personal information to the ratepayer.

[34] I find that a privacy breach has occurred.

[35] I find that the RM did not protect the Complainant's personal information pursuant to section 23.1 of LA FOIP by bringing a ratepayer to the meeting on October 12, 2022.

[36] I find that Policy 491-22 was not adequate in preventing the privacy breach from occurring.

IV RECOMMENDATIONS

[37] I recommend that the RM send a letter to the Complainant to apologize for breaching their privacy.

[38] I recommend that the RM revise its policy to ensure that RM employees and council members only collect, use, and/or disclose personal information on a need-to-know basis in accordance with LA FOIP within three months of the issuing of this Report.

[39] I recommend that once the RM has revised its Policy 491-22, that the RM provide annual mandatory privacy training to its employees and council members.

Dated at Regina, in the Province of Saskatchewan, this 11th day of May, 2023.

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