



REVIEW REPORT 069-2020

Prairie Valley School Division No. 208

October 6, 2021

Summary:

Prairie Valley School Division No. 208 (Prairie Valley) received an access to information request from the Applicant for GPS data from one of its school bus routes and information about complaints related to the route. The Commissioner found that the majority of the information that Prairie Valley withheld qualified as personal information, and therefore section 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) applied. The Commissioner also found that sections 17(1)(d), (e) and (g) of LA FOIP did not apply to the remaining portions of the record. The Commissioner recommended that Prairie Valley release and withhold records as described in Appendix A of this Report.

I BACKGROUND

[1] On February 13, 2020, the Prairie Valley School Division No. 208 (Prairie Valley) received an access to information request for the following information:

Please provide me with

- GPS records for [a specific school bus route] for the 2019-2020 school year
- complaint records for [a specific school bus route] for the 2019-2020 school year
- camera recording - if available for the February 12th 08:15- 08:50

[2] Prairie Valley confirmed by telephone with the Applicant that they were seeking records for the time frame from September 2019 to February 14, 2020.

[3] On March 12, 2020, Prairie Valley provided a section 7 response to the Applicant. It also provided the Applicant with certain responsive records. Prairie Valley also advised the Applicant that some of the information that related to the first two parts of the request were being withheld pursuant to sections 17(1)(d), (e), (g) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). It also indicated that records responsive to the last part of the Applicant’s access request did not exist.

[4] On March 18, 2020, the Applicant requested a review of the application of sections 17(1)(d), (e), (g) and 28(1) of LA FOIP by my office. On April 7, 2020, my office notified both Prairie Valley and the Applicant of my intention to undertake a review.

II RECORDS AT ISSUE

[5] The records responsive to the Applicant’s request for Global Positioning System (GPS) data for the school bus for a specific route are divided into morning route data and afternoon route data. The morning route data is in one document totalling 349 pages and the afternoon route data is another document totalling 231 pages. Both documents contain a table with 17 columns. Each row represents a GPS update from the school bus. These updates occur at various time frames, at approximately 30 second intervals. As an example, on the first day, there were 147 updates in the 76 minute duration of the morning route. Prairie Valley originally provided the Applicant with the rows that led to their child’s pick up or drop off, approximately four to five rows per route. Since then, Prairie Valley has indicated that it is withholding 6 of the 17 columns in their entirety, with the exception of what has already been released to the Applicant. The columns it is still withholding are as follows:

Column	Sections of LA FOIP
Time (includes the date and time of each GPS signal from the school bus)	17(1)(d), (e), (g) and 28(1)
Speed	17(1)(d), (e), (g) and 28(1)
Location (street names)	17(1)(d), (e), (g) and 28(1)
Distance	17(1)(d), (e), (g) and 28(1)
Latitude	17(1)(d), (e), (g) and 28(1)
Longitude	17(1)(d), (e), (g) and 28(1)

[6] Prairie Valley also withheld four additional email strings, totalling six pages pursuant to sections 17(1)(d), (e), (g) and 28(1) of LA FOIP. These emails relate to the portion of the access request that relates to other complaints about the bus route. See Appendix A of this Report for a more detailed description.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[7] Prairie Valley qualifies as a local authority pursuant to section 2(f)(viii) of LA FOIP. Therefore I have jurisdiction to conduct this review.

2. Does section 28(1) of LA FOIP apply to the record?

[8] Section 28(1) of LA FOIP provides:

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.

[9] Prairie Valley has applied section 28(1) of LA FOIP to all of the information it withheld. It submitted that the various portions of the information in question qualify as personal information pursuant to sections 23(1)(b), (e), (g), (h) and (k) of LA FOIP. I will also discuss section 23(1)(f) of LA FOIP. These sections 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;

...

(e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;

(f) the personal opinions or views of the individual except where they are about another individual;

(g) correspondence sent to a local authority by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another 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.

[10] While section 23(1) of LA FOIP provides an enumerated list of examples of what is considered personal information under LA FOIP; it is not an exhaustive list. This means there can be other types of information that could qualify as personal information. In order to constitute personal information, two elements must be present: (1) an identifiable individual; and (2) information that is personal in nature. The definition for each is as follows (Review Report 152-2019 at paras. [12] and [15]):

Identifiable individual means that it must be reasonable to expect that an individual may be identified if the information were disclosed. The information must be reasonably capable of identifying particular individuals because it either directly identifies a person or enables an accurate inference to be made about their identity when combined with other available sources of information or because of the context of the information in the record.

Personal in nature means that the information reveals something personal about the individual.

GPS Data

[11] As marked on the copy of the record provided to my office, Prairie Valley indicated that the data withheld from the GPS data tables qualify as personal information pursuant to sections 23(1)(b) and (e) of LA FOIP. This includes the time, speed, location, distance,

latitude and longitude columns. However, in its submission, Prairie Valley did not specifically address how the GPS data in these columns qualify as information that relates to the education, criminal or employment history or financial transactions of any individual or the home or business address, home or business telephone number, fingerprints or blood type of any individual.

[12] The location, latitude and longitude and time columns relate to the pickup and drop off times and locations of the students who ride the bus. Not only could this information be used to decipher where the students live, but it could also reveal parental and childcare arrangements of the students. I consider this to be personal in nature. Some of the students on the bus are known to the Applicant and, are therefore, identifiable individuals. The information in these columns qualify as personal information of the students on the bus.

[13] I will consider if the distance and speed columns also qualify as personal information. Prairie Valley discussed its policies in its submission. It indicated that its Administrative Policy states that the GPS data would be used for safety and performance management purposes. It stated that the policy indicates that the information is personal information and is not publicly available. On September 8, 2021, my office accessed Prairie Valley's *Administrative Procedures AP-8115 GPS on School Buses* (dated July 2, 2015) from its website. It states "Information concerning routes may be shared with families on the route but personal information such as driver speed and parent and student information will not be shared."

[14] In Review Report 273-2019 at para. [18], I found that the event data recorder (EDR) information of a private vehicle "would indeed reveal something about the other driver that might not otherwise be known; that is, how they were driving just prior to the accident, and that such information would be personal in nature." In that report, the driver was also an identifiable individual to the applicant in that review. Therefore, the EDR information qualified as personal information.

[15] In this case, the data in the speed and distance columns of the record is similar to the EDR data discussed above. However, the driver related to these records was not driving a private

vehicle, but a school bus for Prairie Valley. I then must consider whether the data would still qualify as personal information of the driver of the school bus.

[16] The Office of the Information and Privacy Commissioner for British Columbia (BC IPC) discussed this issue in Order F13-04. This Order stated that, consistent with previous BC IPC Orders, when the public body in question collected and used system information disclosing the whereabouts of a patrol vehicle, it collected personal information of the driver assigned to that vehicle for the shift in question. The Order also indicated that system information disclosing vehicle speed is information about how the assigned employee is driving.

[17] While the definition of personal information is different in British Columbia's *Freedom of Information and Protection of Privacy Act* than it is in FOIP, I note that the BC IPC Order found that the information was personal information even though it was a company vehicle. In this case, the data in the speed and distance columns of the record, combined with other available information could also reveal how the assigned employee is driving the school bus as part of his employment. This ability to combine information makes the information personal in nature. Further, the driver is known to the Applicant and is therefore an identifiable individual.

[18] Even though the information in question qualifies as the personal information of the driver, Prairie Valley may still collect and use it in accordance with Part IV of LA FOIP for the purposes of performance management and ensuring the safety of students. This is part of Prairie Valley's role and individuals with concerns can raise them with the school division.

[19] I find that the withheld GPS data qualifies as personal information and section 28(1) of LA FOIP has been properly applied to these portions of the record.

[20] Further, there is GPS data from the tables described above in the emails which I will discuss next in this Report. This GPS data in those emails also qualifies as personal information and section 28(1) of LA FOIP has been properly applied to these portions of the record.

Email strings related to other complaints about the route

- [21] Prairie Valley also applied section 28(1) of LA FOIP to four email strings, totaling six pages of the record, in their entirety. These are identified as records 3, 4, 5 and 6 in Appendix A. The email strings are responsive to the “complaint records” for the school bus route portion of the Applicant’s access to information request. Prairie Valley submitted that the information in the emails constituted personal information of the driver pursuant to sections 23(1)(b), (g) and (h) of LA FOIP.
- [22] Records 3 and 5 contain emails that describe a conversation that occurred between an employee of Prairie Valley and individuals who are not employees. The description is then forwarded to other employees of Prairie Valley without comment. Record 4 originates as an email from individuals external to Prairie Valley to an employee of Prairie Valley, the email is then shared internally. Finally, the email string of record 6 originates as a generic email from Prairie Valley to all families on the school bus route in question. The original email is then forwarded back by an individual external to Prairie Valley, with comments. These emails are then shared internally.
- [23] Some of the information in each of these email strings have been collected by Prairie Valley from individuals external to the school division. The portions of the emails contain the opinions and views of these individuals about certain situations. The opinions and views about situations qualify as personal information of these individuals pursuant to section 23(1)(f) of LA FOIP. This includes the identity of the opinion-giver. These portions of the emails also contain opinions and views in these emails about other individuals who are not the Applicant and they qualify as the personal information of those other individuals pursuant to section 23(1)(h) of LA FOIP.
- [24] There are portions of the email strings that would not qualify as personal information such as portions of email headers, signature blocks, and confidentially notices of emails that circulated information within Prairie Valley. Further, the email that was sent to all families using the specific bus route would not be personal information and would likely have been already received by the Applicant. This would not qualify as personal information.

[25] I find that Prairie Valley properly applied section 28(1) of LA FOIP to portions of the record. These portions are described in detail in Appendix A of this Report.

3. Does section 17(1)(d) of LA FOIP apply to the record?

[26] Section 17(1)(d) of LA FOIP provides:

17(1) Subject to section (3), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(d) information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the local authority;

[27] Prairie Valley has applied section 17(1)(d) of LA FOIP to all of the information it withheld. However, as I have found Prairie Valley should continue to withhold most of it pursuant to section 28(1) of LA FOIP, I will now consider if section 17(1)(d) of LA FOIP applies to email headers, signature blocks, and confidentially notices of emails that circulated within Prairie Valley, as described previously.

[28] My office's *IPC Guide to LA FOIP, Chapter 4*, "Exemptions from the Right of Access", updated April 29, 2021 [*Guide to LA FOIP*, Ch. 4] provides guidance on this section starting at page 146. It permits refusal of access in situations where release of a record could reasonably be expected to disclose information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of the local authority. This exemption is intended to protect a local authority's ability to negotiate effectively with other parties. The following two-part test can be applied:

1. Are there contractual or other negotiations occurring involving the local authority?
2. Could release of the record reasonably be expected to interfere with the contractual or other negotiations?

1. Are there contractual or other negotiations occurring involving the local authority?

- [29] In its submission, Prairie Valley indicated that the contractual negotiations occurring at the time was collective agreement bargaining between Prairie Valley and the Canadian Union of Public Employees (CUPE). Prairie Valley indicated that the negotiations would occur in the 2020-2021 school year. The *Guide to LA FOIP*, Ch. 4 at page 147, states that once a contract is executed, negotiation is concluded.
- [30] On September 8, 2021, my office asked if these negotiations had concluded and, if so, if Prairie Valley was still relying on section 17(1)(d) of LA FOIP to withhold the record. Prairie Valley indicated that the noted negotiations had concluded. However, it indicated that, while the CUPE collective agreement has been executed, it continued to rely on this exemption. It indicated that the impact of the release of the records in question could extend beyond the current CUPE agreement and also impact current and future negotiations, grievances and agreements with other employee groups, not only within Prairie Valley, but also impacting other school divisions as well.
- [31] The *Guide to LA FOIP*, Ch. 4 indicates that prospective or future negotiations could be included within this exemption, as long as they are foreseeable. It may be applied even though negotiations have not yet started at the time of the access to information request, including when there has not been any direct contact with the other party or their agent. However, a vague possibility of future negotiations is not sufficient. There must be a reasonable fact-based expectation that the future negotiations will take place.
- [32] In this case, I am not satisfied that Prairie Valley was specific enough to identify the negotiations that the release of the email headers, signature blocks, and confidentially notices of emails in question would impact. The first test has not been met.
- [33] I find that section 17(1)(d) of LA FOIP does not apply to the record.

4. Does section 17(1)(e) of LA FOIP apply to the record?

[34] Section 17(1)(e) of LA FOIP provides:

17(1) Subject to section (3), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(e) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the local authority, or considerations that relate to those negotiations;

[35] Prairie Valley has applied section 17(1)(e) of LA FOIP to all of the information it withheld. However, as I have found Prairie Valley should continue to withhold most of it pursuant to section 28(1) of LA FOIP, I will now consider if section 17(1)(e) of LA FOIP applies to email headers, signature blocks, and confidentially notices of emails that circulated within Prairie Valley, as described previously.

[36] The *Guide to LA FOIP*, Ch. 4, pp. 151 to 153, indicates the following two-part test can be applied to determine if section 17(1)(e) of LA FOIP applies:

1. Does the record contain positions, plans, procedures, criteria, instructions or considerations that relate to the negotiations?
2. Were the positions, plans, procedures, criteria, instructions or considerations developed for the purpose of contractual or other negotiations by or on behalf of the local authority?

[37] In its submission, Prairie Valley did not specifically indicate whether it thought the records in question qualified as positions, plans, procedures, criteria, instructions or considerations. The *Guide to LA FOIP*, Ch. 4, pp. 151-152, defines the following:

A **position** is a point of view or attitude. An opinion, stand; a way of regarding situations or topics; an opinion that is held in opposition to another in an argument or dispute.

A **plan** is a formulated and especially detailed method by which a thing is to be done; a design or scheme. A detailed proposal for doing or achieving something; an intention or decision about what one is going to do.

A *procedure* is an established or official way of doing something; a series of actions conducted in a certain order or manner.

Criteria are standards, rules, or tests on which a judgement or decision can be based or compared; a reference point against which other things can be evaluated.

Instructions are directions or orders.

A *consideration* is a careful thought; a fact taken into account when making a decision...

[38] As previously described, the records in question are email headers, signature blocks, and confidentially notices of emails. They do not meet the definitions of positions, plans, procedures, criteria, instructions or considerations. The first test is not met. As both parts of the test must be met, there is no need to consider the second part.

[39] I find that section 17(1)(e) of LA FOIP does not apply to the record.

5. Does section 17(1)(g) of LA FOIP apply to the record?

[40] Section 17(1)(g) of LA FOIP provides:

17(1) Subject to section (3), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(g) information, the disclosure of which could reasonably be expected to result in an undue benefit or loss to a person.

[41] Prairie Valley has applied section 17(1)(g) of LA FOIP to all of the information it withheld. However, as I have found Prairie Valley should continue to withhold most of it pursuant to section 28(1) of LA FOIP, I will now consider if section 17(1)(g) of LA FOIP applies to email headers, signature blocks, and confidentially notices of emails that circulated within Prairie Valley, as described previously.

[42] My office uses the following test when determining if section 17(1)(g) of LA FOIP applies to a record: Could disclosure reasonably be expected to result in an undue benefit or loss to a person?

[43] The local authority does not have to prove that harm is probable, but needs to show that there is a “reasonable expectation of harm” if any of the information were to be released. Local authorities should not assume that harm is self-evident. While the expectation of harm need not be a certainty, evidence must:

- show how the disclosure of information would cause harm;
- indicate the extent of harm that would result; and
- provide facts to support the assertion.

[44] In its submission, Prairie Valley submitted that the release of the records in question could result in an undue loss to the school bus driver. Prairie Valley did not indicate what the loss would be if the records were disclosed. It did not show how release of the email headers, signature blocks, and confidentiality notices of the emails would cause the undue loss or what extent of the undue loss would result. Finally, Prairie Valley did not provide facts to support its assertion.

[45] I am not persuaded that the release of the information in question would result in undue loss to a person. Section 17(1)(g) of LA FOIP does not apply to the record.

[46] I recommend that Prairie Valley release other portions of the record to the Applicant, as described in Appendix A of this Report, including portions of the GPS data tables where exemptions have not been applied, if it has not already done so.

IV FINDINGS

[47] I find that Prairie Valley properly applied section 28(1) of LA FOIP to portions of the record.

[48] I find that section 17(1)(d) of LA FOIP does not apply to the record.

[49] I find that section 17(1)(e) of LA FOIP does not apply to the record.

[50] I find that section 17(1)(g) of LA FOIP does not apply to the record.

V RECOMMENDATION

[51] I recommend that Prairie Valley release other portions of the record to the Applicant, as described in Appendix A of this Report, including portions of the GPS data tables where exemptions have not been applied, if it has not already done so.

Dated at Regina, in the Province of Saskatchewan, this 6th day of October, 2021.

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

APPENDIX A

Record #	Pages	Description of information	Exemptions applied	Do the exemptions apply?	Release or Withhold
1	1-349	The time, speed, location, distance, latitude and longitude columns of the GPS data collected by the school bus	17(1)(d)	No need to review	Withhold
			17(1)(e)	No need to review	
			17(1)(g)	No need to review	
			28(1)	Yes	
2	1-231	The time, speed, location, distance, latitude and longitude columns of the GPS data collected by the school bus	17(1)(d)	No need to review	Withhold
			17(1)(e)	No need to review	
			17(1)(g)	No need to review	
			28(1)	Yes	
3	1	<ul style="list-style-type: none"> Text of an internal Prairie Valley email describing a telephone conversation with an individual Email subject lines GPS data 	17(1)(d)	No need to review	Withhold
			17(1)(e)	No need to review	
			17(1)(g)	No need to review	
			28(1)	Yes	
	2	<ul style="list-style-type: none"> Email headers, (with exception of email subject lines) Signature blocks Confidentiality notices 	17(1)(d)	No	Release
			17(1)(e)	No	
			17(1)(g)	No	
			28(1)	No	
2	<ul style="list-style-type: none"> Confidentiality notice 	17(1)(d)	No	Release	
		17(1)(e)	No		
		17(1)(g)	No		
		28(1)	No		
4	1	<ul style="list-style-type: none"> Text of email from an external individual Email header information of email from external individual Email signature of external individual 	17(1)(d)	No need to review	Withhold
			17(1)(e)	No need to review	
			17(1)(g)	No need to review	
			28(1)	Yes	
	2	<ul style="list-style-type: none"> Email header information where external email is shared internally (with the exception of the subject line) Internal signature blocks Confidentiality notices 	17(1)(d)	No	Release
			17(1)(e)	No	
			17(1)(g)	No	
			28(1)	No	
5	1	<ul style="list-style-type: none"> Text of an internal Prairie Valley email describing a telephone conversation with an individual Email subject lines GPS data 	17(1)(d)	No need to review	Withhold
			17(1)(e)	No need to review	
			17(1)(g)	No need to review	
			28(1)	Yes	
	2	<ul style="list-style-type: none"> Email headers, (with exception of email subject lines) Signature blocks Confidentiality notices 	17(1)(d)	No	Release
			17(1)(e)	No	
			17(1)(g)	No	
			28(1)	No	
	2	<ul style="list-style-type: none"> Confidentiality notice 	17(1)(d)	No	Release
			17(1)(e)	No	
			17(1)(g)	No	
			28(1)	No	

Record #	Pages	Description of information	Exemptions applied	Do the exemptions apply?	Release or Withhold
6	1	<ul style="list-style-type: none"> • Text of email from external individual • “Sent” and “From” line of email from external individual 	17(1)(d)	No need to review	Withhold
			17(1)(e)	No need to review	
			17(1)(g)	No need to review	
			28(1)	Yes	
		<ul style="list-style-type: none"> • Group email to all families on school bus route (including subscription notice) • Group email header (with the exception of the “To” line) • “To” and “Subject” line of email from external individual • Email heading, signature block and confidentiality notice of emails being shared internally 	17(1)(d)	No	Release
			17(1)(e)	No	
			17(1)(g)	No	
			28(1)	No	