



INVESTIGATION REPORT 021-2018

City of Regina

September 21, 2018

Summary: The Office of the Information and Privacy Commissioner (IPC) received a complaint alleging that the City of Regina (City) breached the privacy of an individual by collecting, using and disclosing the individual's personal information contained in text messages. Upon investigation, the Commissioner found that the City had authority to collect and use the personal information in the text messages for the purposes of managing its employees and investigating a harassment complaint. Further, the Commissioner found that there were no disclosures to consider as the only disclosure was to the individual's union which the individual consented to. The Commissioner recommended the City take no further action.

I BACKGROUND

- [1] On January 18, 2018, my office received a complaint from an individual (the Complainant) that the City of Regina (the City) collected the Complainant's personal conversations in the form of texts without the Complainant's consent.
- [2] The Complainant first raised privacy concerns with the City on December 21, 2017. The City investigated the complaint and provided a copy of its internal investigation report to the Complainant on January 17, 2018. The finding was that the City's actions complied with *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] On January 29, 2018, my office notified the City that it would be conducting a privacy breach investigation pursuant to section 32 of LA FOIP. My office requested that the City provide a copy of its internal investigation report. It was received on February 12, 2018.

II DISCUSSION OF THE ISSUES

1. Does the Commissioner have jurisdiction?

[4] The City is a “local authority” pursuant to subsection 2(f)(i) of LA FOIP. Thus, I have jurisdiction to conduct this investigation.

2. Is there personal information involved?

[5] In order for the privacy provisions under LA FOIP to be engaged, the data elements at issue must constitute personal information. The data elements are contained in texts and include:

- The last name of the Complainant;
- A personal cell phone number associated with the Complainant; and
- An opinion made by another person about the Complainant (“dumb employee”).

[6] Subsection 23(1) of LA FOIP defines what qualifies as personal information. Specifically, subsections 23(1)(e), (h) and (k)(i) of LA FOIP provide that the telephone number of an individual, views or opinions about an individual and the name where it appears with other personal information qualifies as personal information pursuant to these provisions. Subsections 23(1)(e), (h) and (k)(i) 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:

...

(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;
...

[7] Therefore, I find that there is personal information of the Complainant's involved pursuant to subsections 23(1)(e), (h) and (k)(i) of LA FOIP.

3. Did the City have authority to collect the Complainant's personal information?

[8] Once personal information is established, the next step is to consider which of the three primary privacy activities is engaged, i.e. collection, use and/or disclosure. Finally, authority for the privacy activity would need to be established. Where there is no authority for a collection, use or disclosure of personal information, a privacy breach has occurred.

[9] Based on the complaint to the City and the one received by my office, the concern centers on the City's collection, use and disclosure of the Complainant's personal information in the text messages. The text messages involve three employees of the City. The Complainant sent a text message from his personal cell phone to another employee (also a personal cell phone) advising that the Complainant was watching another employee at a restaurant with the intent of reporting that employee to the police as an impaired driver when he left the restaurant. The employee who received the text messages shared them with the individual who was the subject of them. The subject of them then filed a harassment complaint with the City's Human Resources Consultant and included a printed copy of the text messages.

[10] *Collection* occurs when a public body gathers, acquires, receives or obtains personal information. It includes the gathering of information through forms, interviews, questionnaires, surveys, polling and video surveillance. There is no restriction on how the information is collected. The means of collection may be in writing, audio or videotaping, electronic entry or other means. (Saskatchewan Office of the Information and Privacy Commissioner (SK OIPC) online resource, *Dictionary* and found in Investigation Report F-2012-001 at [17]. Definition also found at subsection 2(b) of *The Health Information Protection Act* (HIPA).

[11] Section 24 of LA FOIP requires the City to demonstrate that the collection of the Complainant's personal information was for a specific purpose, necessary and lawful in accordance with section 24 of LA FOIP. Section 24 provides:

24 No local authority shall collect personal information unless the information is collected for a purpose that relates to an existing or proposed program or activity of the local authority.

[12] *Purpose* means the purpose for which the information was collected. Typical purposes include the administration of a particular program, the delivery of a service or other directly related activities.

[13] In its internal investigation report, the City pointed to the general duties of employers at subsections 3-8(a), (d), (h) and (i) of *The Saskatchewan Employment Act* which provide as follows:

3-8 Every employer shall:

(a) ensure, insofar as is reasonably practicable, the health, safety and welfare at work of all of the employer's workers;

...

(d) ensure, insofar as is reasonably practicable, that the employer's workers are not exposed to harassment with respect to any matter or circumstance arising out of the workers' employment;

...

(h) ensure, insofar as is reasonably practicable, that the activities of the employer's workers at a place of employment do not negatively affect the health, safety or welfare at work of the employer, other workers or any self-employed person at the place of employment; and

(i) comply with this Part and the regulations made pursuant to this Part.

[14] The City asserted that it was an employer within the meaning of *The Saskatchewan Employment Act* and *The Occupational Health & Safety Regulations*. Further, that the City implemented a policy aimed at preventing harassment of employees in 2006. A copy of the policy was provided to my office. The City asserted that the policy defines harassment and lists behavior that may constitute harassment. Included in the list are stalking and "malicious gestures or actions". Further, the scope of the policy includes behavior that

occurs “outside the workplace when it can be proven that the harassment had originated in the workplace or comes back into the workplace”.

[15] Finally, the City added that the policy identifies the City’s Human Resources Workplace Health and Safety Branch as responsible for deciding the steps appropriate to determine a complaint of harassment and to investigate it. The City’s harassment policy includes a dispute resolution process to be followed in the event an employee advances a claim of harassment.

[16] In Investigation Report 266-2017, I found that managing employees was an existing activity of the Worker’s Compensation Board and as such the collection of an employee’s personal information was in compliance with the equivalent of LA FOIP’s section 24 in *The Freedom of Information and Protection of Privacy Act*. (SK OIPC Investigation Report 266-2017 at [20] to [25]. The equivalent provision was section 25 of *The Freedom of Information and Protection of Privacy Act*.)

[17] Therefore, in this case, I find that the City’s collection of the Complainant’s personal information was for the purpose of a workplace investigation which falls under the activity of managing employees. Further, I find that managing employees is an activity of the City authorized by section 24.

[18] The Complainant provided a submission with extensive analysis of the right to be secure against unreasonable search or seizure in the context of *The Charter of Rights and Freedoms*. The submission argues the City’s Human Resources department required a warrant or consent to obtain, transmit, record, print or distribute the text messages. Further, that the City’s actions are in violation of *The Charter of Rights and Freedoms*.

[19] I will not consider this allegation of violations of *The Charter of Rights and Freedoms*. I will leave that to the court system. I have jurisdiction to consider privacy rights in the context of LA FOIP. A local authority does not require consent to collect, use or disclose personal information for the core business of the local authority. Consent is normally required for uses and disclosures that are not directly related to the business of the local

authority. When the subject of the text messages provided a copy of the messages to the City's Human Resources department it was for the purpose of making a harassment complaint. Investigating that complaint was part of the core business of the City. Therefore, consent was not required.

4. Did the City have authority to use the Complainant's personal information?

[20] The Complainant raised the issue of use and disclosure of his personal information in the text messages. However, it appears that there were no disclosures that occurred that require analysis.

[21] *Use* is the internal utilization of personal information by a local authority and includes sharing of the personal information in such a way that it remains under the control of that local authority.

[22] *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 record/information.

[23] Based on the City's internal investigation report and the complaint received by my office, there is no evidence that the City disclosed the text messages to anyone outside of the organization other than the Complainant's union. The Complainant's union representatives were present at the harassment investigation interview with the Complainant. The Complainant verbally authorized the disclosure to his union representatives. Therefore, this analysis will only focus on the internal use of the information.

[24] 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:

(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).

[25] In its internal investigation report, the City asserted that it had authority under subsection 27(b) of LA FOIP to use the Complainant's personal information in the text messages. In support of this, the City pointed to subsection 28(2)(e) and (i) of LA FOIP as its authority to disclose. Subsections 28(2)(e) and (i) of LA FOIP provide:

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:

...

(e) for the purpose of enforcing any legal right that the local authority has against any individual;

...

(i) for the purpose of complying with:

(i) an Act or a regulation;

(ii) an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada; or

(iii) a treaty, agreement or arrangement made pursuant to an Act or an Act of the Parliament of Canada;

[26] The City asserted in its internal investigation report that information regarding the harassment claim was shared only with those involved in the harassment investigation process. The City listed the individuals who were involved.

[27] Although the City raised subsection 27(b) of LA FOIP as authority to use the Complainant's personal information, there were no disclosures outside of the City except to the Complainant's union which the Complainant consented to. Alternatively, subsection 27(a) of LA FOIP allows a local authority to use personal information for purposes consistent with the reason it was collected. A use or disclosure has a reasonable and direct connection to the original purpose if there is a logical and plausible link to the original purpose. A consistent use should grow out of or be derived from the original use; it should not be an unrelated or secondary use of the information, otherwise known as "function creep". (Service Alberta, *FOIP Guidelines and Practices (2009)*, at pp. 294-295.)

[28] Based on what the City has provided, it appears the City used the information for a purpose consistent with the purpose it was collected which was investigating a harassment complaint. Therefore, I find that the City had authority to use the Complainant's personal information pursuant to subsection 27(a) of LA FOIP.

III FINDING

[29] I find the City had authority to collect and use the Complainant's personal information.

IV RECOMMENDATION

[30] I recommend the City take no further action.

Dated at Regina, in the Province of Saskatchewan, this 21st day of September 2018.

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