



INVESTIGATION REPORT 028-2018,049-2018

Good Spirit School Division No. 204

August 9, 2018

Summary: Good Spirit School Division (Good Spirit) proactively reported a privacy breach to the Commissioner. After an incident that engaged Good Spirit's Violent Threat Risk Assessment (VTRA) protocol, an employee disclosed too much personal information of a student to classmates and parents. The Commissioner found that Good Spirit responded satisfactorily to the breach. This included creating policies for responding to inquiries of stakeholders when VTRA is engaged. The Commissioner raised some issues for Good Spirit's consideration in the report and recommended they be addressed as Good Spirit updates its policies and procedures.

I BACKGROUND

[1] Early in 2018, the Good Spirit School Division No. 204 (Good Spirit) proactively reported a privacy breach to my office. About a week earlier, some students and a substitute teacher heard a student (the subject individual) make a threat involving guns. Good Spirit dealt with this situation through its protocols, including a Violent Threat Risk Assessment (VTRA). A few days later, an employee of the school discussed the incident and details of the VTRA with some of the subject individual's classmates and sent a letter home to their parents. Good Spirit indicated that too much personal information about the subject individual was disclosed, resulting in a privacy breach.

[2] On February 8, 2018, my office notified Good Spirit that I had opened privacy breach file 028-2018 and would be investigating.

- [3] During this timeframe, Good Spirit verbally notified the subject individual and his parents about the breach. Good Spirit followed up with a letter.
- [4] On March 3, 2018, the parents of the subject individual made a complaint to my office about the disclosure of personal information. They contend that members of the community are treating their family negatively since the disclosure. On March 13, 2018, my office opened file 049-2018 and notified Good Spirit that a complaint had been made. My office notified the Complainants that I would be investigating the matter.

II DISCUSSION OF THE ISSUES

1. Does LA FOIP apply in these circumstances?

- [5] *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) applies to privacy matters when three elements are present. The first element is a local authority, the second element is personal information and the third element is if the personal information is in the possession or control of the local authority.
- [6] Good Spirit qualifies as a local authority pursuant to subsection 2(f)(viii) of LA FOIP which provides:

2 In this Act:

...

(f) “local authority” means:

...

(viii) any board of education or conseil scolaire within the meaning of *The Education Act*;

- [7] Next, I must evaluate if the information conveyed verbally by the employee to the students, and the information in the letter to the parents of the students, qualifies as personal information. Subsection 23(1) of LA FOIP defines personal information. The relevant portions are 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:

...

(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;

...

(h) the views or opinions of another individual with respect to the individual;

[8] The list of examples provided for in subsection 23(1) of LA FOIP is not meant to be exhaustive. There can be other types of information that would qualify as personal information that are not listed. Part of that consideration involves assessing if the information has both of the following:

1. Is there an identifiable individual?

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

2. Is the information personal in nature?

Personal in nature means that the information reveals something personal about the individual. Information that relates to an individual in a professional, official or business capacity could only qualify if the information revealed something personal about the individual for example, information that fits the definition of employment history.

[9] Good Spirit indicated that the employee discussed the following matters with the classmates of the subject individual:

- that the subject individual made a threat and the wording of the threat;
- the fact that the Royal Canadian Mounted Police (RCMP) was called;
- that the subject individual was safe;
- that the RCMP had ensured that all students and staff are safe;
- the opinion that the subject individual’s family are very responsible gun owners and the subject individual could not access weapons;
- that the subject individual had been suspended the specific period of time for the suspension;

- that the school would make some plans before the subject individual returned to school that would include outside of school supports; and
- concerns were raised that the subject individual was being bullied.

[10] The employee shared the fact that the subject individual had made a threat and the school division has taken action, including suspension and a plan to support the subject individual upon return. This would qualify as the education history of the subject individual pursuant to subsection 23(1)(b) of LA FOIP.

[11] Order 01-27, by the Office of the Information and Privacy Commissioner of British Columbia, noted that information about an individual's alleged criminal history or act would qualify as an individual's criminal history. To my knowledge, the subject individual was not charged or convicted in relation to this matter. Nevertheless, information regarding the RCMP's involvement in these circumstances would be personal in nature. As such, it qualifies as personal information pursuant to subsection 23(1) of LA FOIP.

[12] All other information about the subject individual is personal in nature and also qualifies as personal information pursuant to subsection 23(1) of LA FOIP.

[13] I also note that the subject individual's parents are gun owners is information that is personal in nature about the parents. It qualifies as personal information of the parents pursuant to subsection 23(1) of LA FOIP. Further, the opinion that the subject individual's parents were responsible gun owners is an opinion about the parents. As such it qualifies as personal information of the parents pursuant to subsection 23(1)(h) of FOIP.

[14] Good Spirit indicated in its investigation report that the letter sent home to parents did not contain personal information. Upon review, the letter reveals that a plan was put in place regarding a student at the school. As noted above, personal information is about an identifiable individual. If the information enables an accurate inference to be made as to an individual's identity when combined with other available sources of information or due to the context of the information in the record, it would be information about an identifiable individual. In this case, combined with the information about the subject individuals that

the employee disclosed to the students, the information noted in the letter would qualify as personal information about the subject individual.

[15] Finally, the personal information in question was in the possession and under the control of Good Spirit.

2. Did Good Spirit respond appropriately to this privacy breach?

[16] In circumstances where there is no dispute that a privacy breach has occurred, the focus for my office becomes one of determining whether the local authority has appropriately handled the privacy breach. In order to be satisfied, my office needs to be confident that Good Spirit took the privacy breach seriously and appropriately addressed it. In multiple resources, my office recommends five best practice steps be taken by a local authority when responding to privacy breaches. These are:

1. Contain the breach;
2. Notify affected individuals and/or appropriate organizations;
3. Investigate the breach;
4. Plan for prevention; and
5. Write a privacy breach report.

[17] I will use these steps to assess Good Spirit's response to the breach.

Contain the Breach

[18] Upon learning that a privacy breach has occurred, local authorities should immediately take steps to contain the breach. Depending on the nature of the breach, this can include:

- Stopping the unauthorized practice;
- Recovering the records;
- Shutting down the system that has been breached;
- Revoking access privileges; or
- Correcting weaknesses in physical security.

[19] The Director of Good Spirit was made aware of the breach the same day that the employee discussed matters with the students and sent a letter to their parents. The Director took

immediate action by consulting with individuals with privacy expertise available to Good Spirit, including a Superintendent. The Superintendent discussed with the employee that the employee's actions may have constituted a privacy breach. The Superintendent directed the employee not to discuss the details of the VTRA any further.

[20] Good Spirit did not identify some of the information in the letter sent to parents of students as personal information. Another best practice would have been to recover these letters as a containment effort. I accept that this would prove challenging at this late stage.

[21] Overall, I am satisfied with the efforts of Good Spirit to contain the breach.

Notify affected individuals and/or appropriate organizations

[22] Notifying an individual that their personal information has been inappropriately accessed is important for a number of reasons. Not only do individuals have a right to know, they need to know in order to protect themselves from any potential harm that may result from the inappropriate disclosure. Unless there is a compelling reason not to, local authorities should always notify affected individuals.

[23] Good Spirit notified the parents of the subject individual within a reasonable timeframe of the breach. Good Spirit's notification included an apology. It also proactively reported the breach to my office.

Investigate the breach

[24] Once the breach has been contained and appropriate notification has occurred, the local authority should conduct an internal investigation. The investigation is generally conducted by the public body's access and privacy unit because they have the appropriate privacy expertise to do so and understand what the relevant privacy legislation requires of their organization. The investigation should address the incident on a systemic basis and should include a root cause analysis. It should also consider whether the safeguards that were in place at the time of the incident were adequate. The investigation should be documented in

an internal privacy breach investigation report. At the conclusion of its investigation, the public body should have a solid grasp on what occurred.

[25] Good Spirit requested that the employee in question provide documentation about the breach. The employee indicated that there were factually incorrect rumors circulating about the incident involving the subject individual. Further, before the privacy breach, the subject individual's parents had concerns that the subject individual was being bullied at school. Finally, the school was getting calls from parents about the situation. The employee's solution was to discuss the matter with the students and send the letter to the parents.

[26] Good Spirit considered, after the disclosures were made, if they were authorized by subsections 28(2)(l), (n)(i) or (s) of LA FOIP or subsection 10(g)(i) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (the Regulations). Subsections 28(2)(l), (n)(i) and (s) 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:

...

(l) where necessary to protect the mental or physical health or safety of any individual;

...

(n) for any purpose where, in the opinion of the head:

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure; or

...

(s) as prescribed in the regulations.

[27] Subsection 10(g)(i) of the Regulations provide:

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: (i) the performance of any function or duty or the carrying out of any responsibility by an officer or employee of a local authority; or

[28] I note that it is a best practice that local authorities confirm the authority for disclosure before the disclosure is made.

[29] In this case, Good Spirit concluded that the employee could have met the goals without disclosing the personal information. It said the employee did not respect the data minimization principle. The data minimization principle means that a local authority should collect, use or disclose the least amount of personal information necessary for the purpose.

[30] In its investigation, Good Spirit also considered the training received by the employee and its policies and procedures in place at the time of the breach.

[31] Good Spirit indicated that it provided training on LA FOIP in October 2013, January 2015 and February 2016. However, it did not keep track of which employees attended the sessions.

[32] It also reviewed several policies and procedures in effect at the time of the breach. I note the following in particular. First, Good Spirit's Employee Handbook states:

Employees are not allowed to disclose any information they have access to by virtue of their employment with the Good Spirit School Division.

...

You should refrain from discussing personal information when students and/or the public are present and do not leave confidential information in open view.

...

Information not specified as public knowledge is considered confidential and will not be communicated outside of our organization. Any information shared by a client or stakeholder is confidential unless otherwise specified.

Breaching confidentiality is a serious violation of acceptable conduct and *The Local Authority Freedom of Information and Protection of Privacy Act*. Please familiarize yourself with **Administrative Procedure 180: Local Authority Freedom of Information and Protection of Privacy**.

[33] Good Spirit's *Administrative Procedure 180: Local Authority Freedom of Information and Protection of Privacy* discussed when personal information could be disclosed without the individual's consent, but does not discuss the data minimization principle.

- [34] Good Spirit's *Administrative Procedure 165: Safe Schools* deals with, among other emergencies, student threatening behaviors. It stated:

The Director or designate will act as the primary spokesperson for the Division with respect to the media. In the event of a school emergency situation, the Director, in conjunction with the principal and School Response Team, will prepare a statement that will be circulated to inform parents and the media.

- [35] Good Spirit's *Administrative Procedure 191: Education Continuity Plan* is engaged when emergencies, crises and disasters occur. It stated:

The Principal/Response Team Leader will work closely with the appropriate Superintendent and the Senior Executive Assistant in the development of a communication plan in response to a disruptive event. Every effort will be made to provide students, parents and guardians, staff and other stakeholders with prompt and accurate information.

- [36] I note there is some inconsistencies between the two policies that were both engaged at the time of the privacy breach.

- [37] The employee in question should, at the very least, know that the disclosure of personal information and communication with students and parents in this situation required consultation with the leadership of the school division and its privacy officer. As such, the employee was disciplined via a Declaration of Compliance & Understanding.

Plan for prevention

- [38] The next step is to formulate a plan to avoid future breaches of a similar nature. Some changes that are needed may have revealed themselves to the local authority during the investigation phase, such as deficient policies or procedures, a weakness in the system, a lack of accountability measures or a lack of training. This is an important step in addressing a privacy breach because a privacy breach cannot be undone but the local authority can learn from it and improve.

- [39] In its investigation report, Good Spirit listed the following actions it planned to take in the hopes of preventing future breaches:

- Review of *Administrative Procedure 180 - Local Authority Freedom of Information & Protection of Privacy*;
- Review of VTRA Protocol and add of information regarding dealing with community concerns;
- Review of *Administrative Procedure 191 - Education Continuity Plan*;
- Senior Administrators to observe the Webinar "LA FOIP Amendments for School Divisions" hosted by my office and the Saskatchewan School Boards Association;
- Saskatchewan School Boards Association Privacy to present to Good Spirit In-School Administration;
- Review and update *Administrative Procedure 180 - Local Authority Freedom of Information & Protection of Privacy* with in-school administrators and staff;
- Review of *Administrative Procedure 180 - Local Authority Freedom of Information & Protection of Privacy* with in-school administrators and staff to occur at the beginning of each school year;
- Create an employee code of conduct handbook;
- At the start of each school year, Good Spirit employees will review and acknowledge in writing that certain Good Spirit Administrative Procedures and expectations have been reviewed with the Employees, including *Administrative Procedure 180 - Local Authority Freedom of Information & Protection of Privacy*; and
- Good Spirit will review its practices regarding staff acknowledgment of attendance for training (ie: sign-in sheets).

[40] On June 12, 2018, Good Spirit provided me with an update of its progress with respect to its plan for prevention. It has completed many items on this list. As it continues to update policies and procedures, I recommend Good Spirit address the points raised in this Investigation Report.

Write a privacy breach report

[41] Good Spirit has created a detailed privacy breach report.

[42] Overall, I am pleased with Good Spirit's response to this privacy breach.

III FINDING

[43] I find that Good Spirit satisfactorily responded to this breach.

IV RECOMMENDATION

[44] I recommend Good Spirit address the points raised in this Investigation Report as it continues to update its policies and procedures.

Dated at Regina, in the Province of Saskatchewan, this 9th day of August, 2018.

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