

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

INVESTIGATION REPORT 034/2015

City of Saskatoon

Summary: The Complainant was concerned about audio surveillance on City of Saskatoon (the City) Access Transit busses. She complained to the Information and Privacy Commissioner (IPC). The IPC found that while the City has authority under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to use audio surveillance, the IPC said it should use surveillance in the most privacy protective manner possible. In the course of the investigation, the IPC made a number of recommendations to the City, including conducting a privacy impact assessment and updating its surveillance policy. The City responded by stating it would comply with such recommendations.

I BACKGROUND

[1] The Complainant, who uses Access Transit buses in the City of Saskatoon (the City), became concerned about her conversations being recorded by cameras that had been installed on the buses. She raised her concerns with the City regarding the use of audio recording on the buses. Her concerns included having her conversations recorded. On February 18, 2015, the City responded to the Complainant via email. However, the Complainant was not satisfied with the response.

[2] The Complainant raised her concerns with my office and requested that it investigate the matter.

[3] On February 24, 2015, my office notified the Complainant and the City that it would be undertaking an investigation.

II DISCUSSION OF ISSUES

[4] The City of Saskatoon is a “local authority” pursuant to subsection 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

1. Is personal information involved?

[5] My office’s customary analysis when dealing with a complaint under Part IV of LA FOIP is to first determine whether there is “personal information” involved and then to consider which of the three data transactions are engaged, i.e., collection, use, and/or disclosure.

[6] The definition of “personal information” is found at subsection 23(1) of LA FOIP and includes:

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;

[7] The Complainant is concerned about her conversations on the buses being recorded. Her conversations would qualify as personal information pursuant to subsection 23(1) of LA FOIP as what she says would be her personal opinions or views.

2. Does the City have authority to collect the Complainant’s personal information?

[8] In the past, my office has stated that collection occurs when a public body gathers, acquires, receives or obtains personal information.

[9] Section 24 of LA FOIP states that a local authority can only collect personal information for a purpose that relates to an existing or proposed program or activity of the local authority:

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.

[10] The activity is public transit. The City asserts in its submission that surveillance on its buses is to reduce violence against transit operators, vandalism and inappropriate customer behaviour. In order for public transit to operate, the safety and security of the bus driver and passengers must be ensured. I find that the surveillance relates to the activity of the City. Therefore, the City has authority pursuant to section 24 of LA FOIP to conduct surveillance to ensure safety and security.

3. Is the City conducting audio surveillance in accordance with best practices?

[11] LA FOIP protects an individual's privacy right. Surveillance intrudes upon this right. The City must take steps to not intrude upon this right without demonstrable evidence that audio surveillance is necessary. If surveillance is demonstrably necessary, then the City should be carrying it out in the most privacy protective manner. First, I will determine if the City has demonstrated that audio surveillance is necessary in ensuring safety and security of the bus operator and passengers. Second, I will determine if the City is carrying out the audio surveillance in the most privacy protective manner.

a. Has the City demonstrated that audio surveillance is necessary?

[12] The Office of the Information and Privacy Commissioner in British Columbia (BC OIPC) states in its *Public Sector Surveillance Guidelines* that it is not enough to say that personal information would be "nice to have" or could be useful in the future. In order for the personal information to be necessary, the personal information must be directly related to a program or activity of the public body. I agree. Therefore, the City must be able to demonstrate that audio surveillance is necessary to ensure safety and security of the bus operator and the passengers.

[13] In the course of my office's investigation, the City cited two incidents where audio surveillance has or would have assisted in resolving and disproving false allegations

against transit operators in criminal and Saskatchewan Human Rights Commission investigations.

[14] Further, in its letter dated April 10, 2015, the City asserted that that both passengers and staff raise concerns about inappropriate comments or conversations that occur on buses but it is difficult to address these concerns when witnesses are not willing to come forward. Further, it asserts that “video and audio recordings clarify the facts and details of events without convoluting the facts or details due to personal perspectives.”

[15] Since there have been incidents that have occurred where audio surveillance could have or have played a role in resolving matters, then I find that audio surveillance could be necessary in certain circumstances.

b. Is the City carrying out audio surveillance in the most privacy protective manner possible?

[16] My office’s role includes ensuring that public bodies carry out their programs and activities in the most privacy protective manner possible. I have already found that the City has authority under LA FOIP to conduct audio surveillance. The following is to determine if the City is carrying out the surveillance in the most privacy protective manner.

i. Has the City conducted a privacy impact assessment (PIA) for its surveillance?

[17] A PIA is a diagnostic tool designed to help a local authority assess its compliance with the privacy requirements of LA FOIP. Ideally, a PIA should be conducted at the planning stages of an initiative so that once it comes to implementation, the initiative is undertaken in the most privacy protective manner possible.

[18] An example of how PIAs can assist public bodies is that they can assist in preventing function creep. Function creep means that information that is collected for one purpose,

but is then used for a separate and unrelated purpose. For example, the City has cited that surveillance is used for safety and security. However, surveillance in the workplace (in this case, an Access Transit bus) can be used for employee evaluation purposes. A PIA can assist the City in ensuring that personal information is only collected, used, and/or disclosed in accordance with LA FOIP.

[19] Another example of how PIAs can assist the City in complying with LA FOIP is that it requires the City in determining how it might limit the collection, use, and/or disclosure of personal information. For example, do all Access Transit buses require surveillance? Or should only certain routes where there is frequent and regular occurrence of disorder require surveillance? These are the types of questions the City could contemplate as it conducts a PIA.

[20] While I have already found that the City has legal authority to conduct surveillance to ensure safety and security, the PIA can inform policies and procedures that need to be created to ensure that the surveillance is being carried out in the most privacy protective manner.

[21] In this particular case, I note that cameras are, or have been, installed on access transit buses already. In spite of that, my office recommended that the City conduct a PIA within three months of receiving its Draft Investigation Report. In its letter dated June 4, 2015, the City advised that it will conduct a PIA on its surveillance system by the end of October 2015.

ii. Does the City have sufficient safeguards in place?

[22] The City has a policy entitled *Video Surveillance Policy* that was last updated on March 1, 2010. This policy appears to address only video surveillance on regular transit buses and not necessarily Access Transit buses.

[23] The policy states that footage is recorded for 130 hours before the digital video recorder reaches capacity. Then, the system will begin to overwrite the oldest information on the

recorder. If there is an incident that requires review, the information is retrieved and recorded to a disc or USB key.

[24] There are many privacy-enhancing features of this policy including how digital recorder's system is looped and then recorded over. Therefore, footage is only retained for a short period of time before it is recorded over. Further, footage is only viewed when an incident is reported. When there is an incident, the footage may only be viewed by a maximum of two system operators and the technical advisor. System operators include the Technical Advisor, Maintenance Manager, Operations Manager, Maintenance Supervisor and the Service Supervisor.

[25] However, the policy can be revised to address the following matters:

- a. Address surveillance on Access Transit buses;
- b. Address audio surveillance specifically;
- c. Address how long footage of incidents are retained (the retention period should give individuals a reasonable amount of time to request access under LA FOIP for a copy);
- d. Conduct regular audits on the use of surveillance equipment to make sure it is being used in accordance with a revised policy;

[26] Because the above matters are not addressed in the policy, I find that the policy does not adequately address surveillance on Access Transit buses. My office recommended that the City revise this policy to address surveillance on Access Transit buses according to the above list.

[27] Further, my office recommended that the City determine if it is necessary for 130 hours of footage to be recorded before the recorder loops. If there is a possibility for the recorder to record less before it loops, then it recommended that the City pursue such a possibility. In its letter dated June 4, 2015, the City committed to reviewing and revising its *Video Surveillance Policy* to address the matters referenced above.

iii. Is the signage provided by the City sufficient?

[28] In its letter dated March 17, 2015, the City indicated that decals notifying individuals of the record is installed at the ambulatory and wheelchair lift locations. The City also provided an image of the sign. The sign reads as follows:

For your safety, you may be recorded by a video surveillance system which may also include audio recording.

[29] Subsection 25(2) of LA FOIP provides that where it is reasonably practicable, that the local authority should inform the individual of the purpose for which the information is collected:

25(2) A local authority that collects personal information that is required by subsection (1) to be collected directly from an individual shall, where reasonably practicable, inform the individual of the purpose for which the information is collected.

[30] I find that the sign complies with subsection 25(2) of LA FOIP. In addition to these signs, my office recommended that contact information be provided if individuals have any questions.

[31] In its letter dated June 4, 2015, the City said it would include the contact information of the Director of Saskatoon Transit, Access Transit Manager, and the telephone number for customer care in a newsletter issued to all registered access transit users at the end of 2015. Further, it said it would provide the contact information on Saskatoon Transit's website.

iv. Are there sufficient consultations done with the public regarding the use of surveillance in public transit?

[32] The City provided me with a briefing note dated January 28, 2008 that indicates that for its video surveillance pilot project on its regular transit buses, there was no negative feedback or customer complaints regarding video surveillance. Based on the materials provided to me, it is not clear what type of consultations were done with the public, if

any, and how these consultations were made known. Public consultations are a method in which the City can inform the public of the surveillance and the public can provide feedback.

[33] As technology evolves, surveillance equipment may be updated that may impact how the City might use the information it collects. My office recommended that the City conduct public consultations if/when it updates its surveillance equipment or practices. Consultations will help shape how the City uses surveillance technology in a way that is effective in ensuring safety and security, while maintaining the privacy of individuals. In its letter dated June 4, 2015, the City said it would include a question about its video and audio surveillance in its customer satisfaction survey that will be conducted in 2016.

IV FINDINGS

[34] I find that the information collected by audio surveillance on Access Transit buses qualifies as personal information as defined by subsection 23(1) of LA FOIP.

[35] I find that the City has authority pursuant to subsection 24 of LA FOIP to collect the Complainant's personal information.

[36] I find that the City has demonstrated that audio surveillance may be necessary in some circumstances.

[37] I find that the City's *Video Surveillance Policy* does not adequately address surveillance on Access Transit buses.

[38] I find that the signage provided by the City is sufficient.

V RECOMMENDATIONS

[39] I recommend that the City follow through with its commitment made in its letter dated June 4, 2015 to my office, and as described in paragraphs [22], [28], [32] and [34] of this Investigation Report.

Dated at Regina, in the Province of Saskatchewan, 11th day of June, 2015.

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