



Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 068-2020

Town of Qu'Appelle

January 4, 2021

Summary:

The Town of Qu'Appelle (the Town) received a privacy complaint from an individual (the Complainant), alleging that the Town had collected, used and disclosed their personal information without their consent. The Commissioner found that there was personal information involved pursuant to subsections 23(1)(b), (d), (e) and (k)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner also found that the Town had authority to collect, use and disclose such personal information pursuant to section 24, subsections 27(b) and 28(2)(e) of LA FOIP respectively, due to ongoing litigation between the Complainant and the Town. The Commissioner recommended that the Town take no further action.

I BACKGROUND

- [1] On February 10, 2020, the Complainant first raised concerns with the Town of Qu'Appelle (the Town) alleging that the Town had breached their privacy pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), by having possession of a past “Residential Contract of Purchase and Sale” (sales contract) regarding a portion of the Complainant’s land, which the Complainant had sold eight years prior. The Complainant also complained to the Town regarding its use and disclosure of this sales contract to the Appeals Assessment Committee (AAC) which is part of the Saskatchewan Municipal Board (SMB).

- [2] On March 4, 2020, the Town responded to the Complainant citing subsections 28(2)(e) and (r) of LA FOIP as authority for its disclosure of the Complainant's sales contract to the AAC.
- [3] On March 25, 2020, the Complainant contacted my office to request an investigation of their privacy concerns. At this time, the Complainant also asserted that the Town submitted a copy of its response to the Complainant's privacy complaint to the AAC.
- [4] On March 31, 2020, my office informed the Town and the Complainant that it would be conducting a privacy breach investigation pursuant to section 32 of LA FOIP. My office requested that the Town provide a copy of its internal investigation report. It was received on April 22, 2020.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [5] The Town is a "local authority" pursuant to subsection 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this investigation.

2. Is there personal information involved?

- [6] In order for the privacy provisions under LA FOIP to be engaged, the data elements at issue must constitute personal information as defined by subsection 23(1) of LA FOIP.
- [7] The Complainant raised concerns about the collection, use and disclosure of the Complainant's personal information in the sales contract. After some clarification with the Town and Complainant, it appeared that there were three sales contracts submitted to the AAC along with Schedule A (all condition documents) and copies of three Saskatchewan Matrix documents (sale matrices) from the Multiple Listing Services (MLS) for each property. In addition, a copy of the Town's response to the Complainant's privacy complaint was shared with the AAC.

[8] The following data elements are contained in these documents:

- a. Sales contracts, all condition documents and sales matrices from MLS:
 - Name of seller (the Complainant);
 - Address of seller (the Complainant);
 - Description of the sale property;
 - Civic address of the sale property;
 - Closing date of the sale property;
 - Condition regarding closing terms, insurance etc.;
 - Signature and initials of the buyer and seller (the Complainant); and
 - MLS listing numbers and matrices.
- b. Copy of response to Complainant
 - Complainant's name with the AAC appeal number.

[9] Subsection 23(1) of LA FOIP defines what qualifies as “personal information”. Subsections 23(1)(b), (e) and (k)(i) 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:

...

(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;

...

(d) any identifying number, symbol or other particular assigned to the individual;

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

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

...

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

information is involved, the rules around collection, use and disclosure of that personal information at Part IV of LA FOIP are engaged in this matter.

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

[11] Once the personal information is established, the second step is to consider which of the three primary privacy activities are engaged: collection, use and/or disclosure. Finally, to assess if the Town had the authority for the privacy activities.

[12] The letters from the Complainant's lawyer to the Town dated February 10, 2020 and March 12, 2020 stated:

... you (sic) are in possession of a past sale agreement [the Complainant] entered into for a portion of [the Complainant's] land in your town and are broadcasting that information. That is a breach of privacy on your part... you report forthwith how you come to have sales agreement in your possession...

... The purchaser, [the Complainant], the realtor and the lawyers involved deny giving the agreement to the Town. So how did the town get that sales agreement? Also, they had it for sometime prior to the appeal according to the submissions of ..., so it wasn't collected for the purpose it was used – the appeal...

[13] *Collection* means to bring or come together, assemble, accumulate, obtain personal information from any source by any means. Collection occurs when a local authority gathers, acquires, receives or obtains personal information. It includes the gathering of information through forms, interviews, questionnaires, surveys, polls, 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 data entry or other means (SK OIPC 2009-2010 Annual Report at Appendix 1, Definitions, page 3 and Service Alberta, FOIP Guidelines and Practices: 2009, Chapter 7 at page 236).

[14] Section 24 of LA FOIP addresses the purpose for the collection of personal information and requires the Town to demonstrate the collection of the Complainant's personal information was for a specific purpose, necessary and lawful in compliance with section 24 of LA FOIP. Section 24 of LA FOIP 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.

[15] In its submission, the Town explained that it was unsure of how and why the sales contracts were collected. It explained that the Chief Administrative Officer (CAO) had started their role in 2018, so was not employed by the Town when the sales contracts were created in 2013. However, the CAO explained that they had recently come across an old folder with the Complainant's name on it. This folder held correspondence between the Complainant and the Town from 2012 onwards. The sales contracts were discovered within that folder which was related to the Complainant's various proposals for the Complainant's lands and the ongoing litigation surrounding the assessment of these lands.

[16] To demonstrate that there was ongoing communication between the Town and the Complainant at the time of the sales contracts being created and possibly collected, the Town provided information from three Town Council resolutions from that time period which stated:

- a. On April 17, 2012, the Town Counsel resolved "THAT the (Town) Planners [name of planner 1] and [name of planner 2] be advised of the attached letter received by Council from [the Complainant] regarding the Town providing services to [the Complainant's] lots requesting the comments regarding the situation.
- b. On November 20, 2012, the Town Counsel resolved "THAT Council instruct the Administrator to send a letter to [the Complainant] authorizing [the Complainant] to hook onto the 2nd Watermain on 12th Avenue, on the condition that the Town Office be supplied with a set of drawings of works for approval before proceedings (sic) with works."
- c. On January 15-16, 2013, Town Counsel notes under delegations record that "[the Complainant] - Would like Council to rezone Lots [Complainant's lots], Block [Complainant's block], Lots [Complainant's lots], Block [Complainant's block] and Lots [Complainant's lots], Block [Complainant's block] from agricultural to residential. [The Complainant] also provided council with an air photo and outline of where the proposed waterline, curb stops and standpipe will be located in [the Complainant's] new development on MacDonald Street." (Emphasis added)

[17] Further in its submission the Town stated:

...Taken together, the new evidence (including the Contracts) and the 2012-13 Town Council resolutions demonstrate that [the Complainant] was in regular communication with the Town regarding the proposed developments of [the Complainant's] Lands. The Town suggests it is most reasonable to infer that the Contracts were provided to the Town to further [the Complainant's] goals in this respect... the best inference available from all of the evidence indicates that the Town collected the information for the purpose of evaluating [the Complainant's] various requests related to [the Complainant's] Land... - a valid activity...

- [18] In order to be compliant with section 24 of LA FOIP, the Town must collect the Complainant's personal information for the purpose of an "existing or proposed program or activity of the local authority".
- [19] In its submission, the Town informed my office that it could not ascertain the date or exact purpose of collection of the sales contracts, but the reference to the Complainant's property in the resolutions listed above clearly indicated that there was ongoing communication between the Town and the Complainant regarding these properties in 2013 when the sales contracts were created.
- [20] Service to land, discussions with the town planners, arranging water connections, re-zoning the land lots would be part of the administrative role of the Town, to support and manage its land and land owners/residents. I recognize that the Town is in the position of trying to explain the reason for a collection by a past Town Council or CAO. I also note that subsection 207(1)(b) of *The Municipalities Act* provides that an assessed person for a property for tax purposes can include "the owner under a bona fide agreement for sale". This suggests that the sales contracts could have been collected at some point to verify the owner(s) of the properties at issue. The exact reason for the collection may never be determined. However, based on a balance of probabilities, I find that the Town's explanation is reasonable.
- [21] Therefore, I find the collection of the sales contracts, condition documents and copies of the sale matrices from MLS was for a purpose related to an "existing or proposed program or activity" of the Town and the collection would be authorized pursuant to section 24 of LA FOIP.

4. Did the Town have the authority to use and disclose the Complainant's personal information?

[22] The Complainant raised the issue of use and disclosure of their personal information in the sales contracts and the Town's disclosure of its response to the Complainant's privacy breach to the AAC.

[23] Section 27 of LA FOIP addresses use of personal information by the local authority. 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).

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

[25] In its submission, the Town explained that the Complainant and the Town were adverse parties in an ongoing litigation related to the valuation of certain properties (lots) which the Complainant owned in the Town. The ongoing litigation principally concerned whether the Complainant's lots should be included under a single property assessment. The litigation is pursuant to *The Municipalities Act*.

[26] Further, in its submission, the Town explained that the initial valuation of the land lots was completed as 12 distinct assessments, rather than a single assessment. The Complainant appealed the initial assessment and was successful at the initial level of appeal, being the Saskatchewan Municipal Board of Revision (BOR). The Town appealed the BOR's

decision and the matter was set to be heard by the AAC. The AAC directed the Town to provide its written submissions that were not placed before the BOR earlier. The Town prepared its submissions and included the sales contracts as part of its evidence to support its case before the AAC. The Town also indicated that the Complainant raised the concern of the Town breaching their privacy to the AAC. In order to defend itself against this allegation, the Town provided its response to the Complainant's concerns to the AAC to support its authority to have collected, used and/or disclosed the Complainant's personal information.

[27] The Town did not indicate which provision of section 27 it was relying on to have used the Complainant's personal information for the purpose of supporting its case in the legal proceeding. However, subsection 27(b) of LA FOIP provides that a local authority can use personal information for a purpose for which it may be disclosed by the local authority pursuant to subsection 28(2) of LA FOIP. Therefore, I must consider the provisions relied on by the Town to disclose the Complainant's personal information to the AAC.

[28] *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.

[29] In this case, the Town disclosed the Complainant's personal information to the AAC. In its submission to my office, the Town cited subsections 28(2)(e) and (r) of LA FOIP as authority for the disclosure. Subsections 28(2)(e) and (r) 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;

...

(r) for any purpose in accordance with any Act or regulation that authorizes disclosure;

...

[30] For disclosure to be permitted under subsection 28(2)(e) of LA FOIP, the local authority must demonstrate that disclosure of personal information was for the purpose of enforcing a legal right against an individual.

[31] In its submission, the Town explained that it was exercising its legal right to provide evidence in an ongoing litigation between the Town and the Complainant. The Town also explained that by redacting the land's purchase price and disclosing the sales contracts only to the AAC, it acted in a manner consistent with the "data minimization" and "need-to-know" principles.

[32] My office considered subsection 28(2)(e) of LA FOIP in Investigation Report 021-2018. However, that Report does not provide assistance in the interpretation of this provision. Therefore, I turn to other jurisdictions with similar provisions.

[33] Alberta's *Freedom of Information and Protection of Privacy Act* has a provision substantially similar to subsection 28(2)(e) of Saskatchewan's LA FOIP. Subsection 40(1)(j) of Alberta's Act was considered by the Alberta Information and Privacy Commissioner in Order F2005-002. In that Order, former Alberta Commissioner Frank Work, Q.C., established that three criteria must be fulfilled for the provision to apply. I adapted these criteria to fit with Saskatchewan's provision:

1. The local authority has a legal right;
2. That legal right is against an individual; and
3. Disclosure of the personal information was made for the purpose of enforcing that legal right.

1. Does the local authority have a legal right?

[34] *Black's Law Dictionary* (St. Paul, Minnesota, West Corp., 11th ed., 2019) at page 1583 defines "legal right" as: "1. a right created or recognized by law. 2. A right historically recognized by common-law courts. Cf. *equitable right*. 3. The capacity of asserting a legally recognized claim against one with a correlative duty to act."

[35] In its submission, the Town stated:

... At the BOR level, section 230(2) of the Municipalities Act permits a respondent (such as the Town) to file any written material they intend to rely upon at the hearing of the appeal. Section 232 makes available a confidentiality order declaring all or any part of the information provided to be confidential, which could be applied to the Contracts [the sales contracts]. The Town's disclosure of the Contracts [the sales contracts] is consistent with these provisions – albeit while pursuing an appeal from the BOR decision. The Town was pursuing its “legal right” to appeal the BOR decision...

[36] Subsection 230(2) of *The Municipalities Act* provides:

230(2) If a party to an appeal other than the appellant intends to make use of any written materials on the hearing of the appeal, at least 10 days before the date set for the hearing the party shall:

(a) file a copy of the materials with the secretary of the board of revision;
and

(b) serve a copy of the materials on every other party to the appeal.

[37] The Town is a party to legal proceedings before the AAC. I find that the Town has a legal right, a right recognized by *The Municipalities Act*, to defend its position before the AAC.

2. Is the legal right against an individual?

[38] “Individual” is not defined in LA FOIP. Again, *Black's Law Dictionary* is helpful in this regard. Page 925 defines “individual” as: “1. Existing as an indivisible entity. 2. Of, relating to, or involving a single person or thing, as opposed to a group.”

[39] The Complainant and the Town are adverse parties in an ongoing litigation related to the valuation of certain properties in the Town owned by the Complainant. The litigation is pursuant to *The Municipalities Act*. Accordingly, I find that the legal right is against an individual (the Complainant) in this case for purposes of the second requirement for subsection 28(2)(e) of LA FOIP.

3. Was the disclosure for the purpose of enforcing that legal right?

[40] The final requirement is that the disclosure must be made for the purpose of enforcing a legal right. LA FOIP does not define “enforcing”. Again, *Black’s Law Dictionary* is helpful in this regard. Page 668 defines “enforce” as “1. To give force or effect to (a law, etc.); to compel obedience to.”

[41] The Complainant appealed the Town’s assessment of the Complainant’s properties. The Town was enforcing its right to present its case for purposes of the appeal to the AAC and to resolve a property tax assessment matter. The ongoing litigation principally concerned whether the Complainant’s lots should be included under a single property assessment for tax purposes.

[42] In terms of the Town disclosing a copy of its privacy complaint response to the AAC, the Town was again responding to an issue raised by the Complainant with the AAC. Therefore, it was again putting forward evidence to defend its position.

[43] Accordingly, I conclude that the Town disclosed the personal information for the purpose of enforcing a legal right. I find that the Town had authority to disclose the personal information pursuant to subsection 28(2)(e) of LA FOIP. As I have found that the Town had authority under subsection 28(2)(e) of LA FOIP, I do not have to consider subsection 28(2)(r) of LA FOIP.

[44] As I have found that the Town had authority to disclose the personal information, I find that it also had authority to use the personal information for this same purpose. As such, I find that the Town also had authority to use the personal information pursuant to subsection 27(b) of LA FOIP and that a privacy breach did not occur.

IV FINDINGS

[45] I find that the Complainant’s personal information is involved pursuant to subsections 23(1)(b), (d), (e) and (k)(i) of LA FOIP.

[46] I find that the Town had authority to collect the Complainant's personal information pursuant to section 24 of LA FOIP.

[47] I find that the Town had authority to use the Complainant's personal information pursuant to subsection 27(b) of LA FOIP

[48] I find that the Town had authority to disclose the Complainant's personal information pursuant to subsection 28(2)(e) of LA FOIP.

[49] I do not find that a privacy breach occurred.

V RECOMMENDATION

[50] I recommend that the Town take no further action.

Dated at Regina, in the Province of Saskatchewan, this 4th day of January 4, 2021.

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