



Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 074-2018, 075-2018

Town of Rocanville, Rural Municipality of Rocanville No. 151 and the Rocanville Parks and Recreation Board

May 27, 2019

Summary:

The Office of the Information and Privacy Commissioner (IPC) received a complaint alleging the Town of Rocanville (the Town) and the Rural Municipality of Rocanville No. 151 (the R.M.) breached the privacy of an individual by disclosing the individual's personal information to other parties including local residents, two boards and a committee. Upon investigation, the Commissioner found that the Rocanville Parks and Recreation Board was a local authority under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner also found that the Town had authority to disclose the Complainant's personal information to the Rocanville Parks and Recreation Board pursuant to subsections 28(2)(s) of LA FOIP and 10(g)(ii) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations). The Commissioner also found that the Rocanville Parks and Recreation Board had authority to disclose the Complainant's personal information to the R.M. pursuant to subsections 28(2)(s) of LA FOIP and 10(g)(ii) of the LA FOIP Regulations. Further, the Commissioner found that the Town did not abide by the *need-to-know* and *data minimization* principles when it disclosed the Complainant's personal information to local residents and the Rocanville Economic Development Board. As such, the Commissioner found the Town could not rely on subsections 28(2)(s) of LA FOIP and 10(g)(ii) of the LA FOIP Regulations for these disclosures. Finally, the Commissioner found that the Rocanville Parks and Recreation Board did not abide by the *need-to-know* and *data minimization* principles when it internally shared the Complainant's personal information with the Potash Corp Rocanville Community Hall Committee. Therefore, the Commissioner found it could not rely on subsection 27(b) of LA FOIP for this use of the personal information. The Commissioner recommended that the Town and Rocanville Parks and Recreation Board provide a letter of apology to the Complainant. Further, the Commissioner recommended that the Town, R.M. and Rocanville Parks and Recreation Board take immediate steps to establish confidentiality

agreements between the parties, develop policy and procedures compliant with section 23.1 of LA FOIP and develop policy clarifying the working and reporting relationships of employees, volunteers and board members that hold additional roles.

I BACKGROUND

[1] On March 9, 2018, my office received a complaint from an individual (the Complainant) that the Town of Rocanville (the Town) and the Rural Municipality of Rocanville No. 151 (the R.M.) breached the Complainant's privacy by sending out emails informing others that the Complainant had been suspended from her position as Recreation Director for the Rocanville Parks and Recreation Board. According to the Complainant, three emails were sent that breached her privacy:

1. Email sent by the Town Administrator on November 29, 2017 to local residents;
2. Email sent by the Town Administrator on December 11, 2017 to the Rocanville Economic Development Organization (REDO); and
3. Email sent by the Chairperson of the Rocanville Parks and Recreation Board on December 11, 2017 to the Rocanville Parks and Recreation Board, the R.M. and the Potash Corp Rocanville Community Hall Committee.

[2] In the first email, the Town Administrator told local residents:

“Due to the situation at the Recreation Office, [the Complainant] & Chair of the Recreation Board are suspended until further notice...”

[3] In the second email, the Town Administrator told REDO members:

“I have been requested to let everyone know that [the Complainant] declined to return to work after [the Complainant's] paid suspension, so we are obliged to accept [the Complainant's] resignation...”

[4] In the third email, the Chairperson of the Rocanville Parks and Recreation Board told the Rocanville Parks and Recreation Board members, the R.M. and the Potash Corp Rocanville Community Hall Committee members:

“[The Town Administrator] informed me today that [the Complainant] has self terminated (legal term is “Job Abandonment”) as Rec Director.”

- [5] The Complainant first raised privacy concerns with the Town and R.M. on December 13, 2017. The Complainant initially received no response. However, once my office got involved, the Complainant received a response by letter dated April 4, 2018. Despite the response, the Complainant was still not satisfied and requested that my office investigate.
- [6] On April 24, 2018, my office notified the Town and the R.M. that it would be conducting a privacy breach investigation pursuant to section 32 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). My office requested that the Town and the R.M. provide internal investigation reports to my office. The R.M. responded on April 26, 2018 indicating that it was not the Complainant’s employer and did not have any role in the emails being sent. The Town responded with a report on May 5, 2018.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [7] I have jurisdiction over bodies that qualify as local authorities under LA FOIP. Further, local authorities are responsible under LA FOIP for the protection of personal information. Given that there are multiple parties involved in this matter, it is necessary to identify each of the parties and determine which ones qualify as a local authority.

The Town

- [8] The Town is a municipality and is therefore a local authority pursuant to subsection 2(f)(i) of LA FOIP which provides:

2 In this Act:

...
(f) “**local authority**” means:

(i) a municipality;

[9] Therefore, I have jurisdiction over the Town. Further, the Town is responsible for the collection, use and/or disclosure of personal information in its possession and/or control.

The R.M.

[10] The R.M. is also a municipality and is therefore a local authority pursuant to subsection 2(f)(i) of LA FOIP. Therefore, I have jurisdiction over the R.M. Further, the R.M. is responsible for the collection, use and/or disclosure of personal information in its possession and/or control.

The Rocanville Economic Development Organization (REDO)

[11] The Town established REDO by *Bylaw No. 2015-22*. According to the Bylaw, the purpose of REDO is to assist, promote and encourage economic and social development in the Rocanville area. REDO does this through various means including creating employment opportunities, diversifying the economy, maintaining and stimulating the existing social and economic base in the area, promoting tourism and various other means. REDO also provides funds to the Rocanville Parks and Recreation Board for recreation activities in the area. Membership consists of members at large and an executive. Members at large are local business people and persons employed in a management capacity in the business sector. The executive consists of a Chairperson, Vice-Chairperson and Secretary/Treasurer. According to the Town, REDO currently has upwards of 30 members.

[12] For REDO to qualify as a local authority, it must be captured by one of the definitions of a local authority under subsection 2(f) of LA FOIP. Subsection 2(f)(v) of LA FOIP provides that:

2 In this Act:

...

(f) **“local authority”** means:

...

(v) any board, commission or other body that:

(A) is appointed pursuant to *The Cities Act*, *The Municipalities Act* or *The Northern Municipalities Act, 2010*; **and**

(B) is prescribed;

[Emphasis added]

- [13] Both parts of the above provision must be met. In terms of subsection 2(f)(v)(A) of LA FOIP, section 8 of *The Municipalities Act* provides authority to a municipality to create bylaws. The Town created REDO via bylaw. Therefore, I find that the Town, by a bylaw under *The Municipalities Act*, established REDO.
- [14] In terms of subsection 2(f)(v)(B) of LA FOIP, Part I of the Appendix of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) provides that boards established pursuant to *The Municipalities Act* qualify as local authorities.
- [15] In conclusion, I find that REDO is a local authority pursuant to subsection 2(f)(v) of LA FOIP. Therefore, I have jurisdiction over REDO. Further, REDO is responsible for the collection, use and/or disclosure of personal information in its possession and/or control.

The Rocanville Parks and Recreation Board

- [16] The Town and R.M. established the Rocanville Parks and Recreation Board through agreement and *Bylaw No. 2017-12*. Both the Town and the R.M. fund the Rocanville Parks and Recreation Board. The function of the Rocanville Parks and Recreation Board is to oversee the operations of all sport, culture and recreational facilities within the Town and the surrounding area. It also advises Town Council on projects to improve or extend facilities (Bylaw No. 217-12 under heading, "*Function*"). According to the Bylaw, the Board is made up of a minimum of seven members with at least one member from Town Council, one member from the R.M. Council and one member from all committees during their active season. Currently, the Board has 12 volunteer members. The Chairperson for the Rocanville Parks and Recreation Board was also the supervisor of the Recreation Director (the Complainant) at the time of the incidents.

[17] Similar to REDO, the Rocanville Parks and Recreation Board was created via bylaw. Therefore, the same line of analysis applies here. Subsection 2(f)(v) of LA FOIP provides that a local authority includes a board that is appointed pursuant to *The Municipalities Act* and is prescribed. Authority to create bylaws is found at section 8 of *The Municipalities Act*. *Town Bylaw No. 2017-12* creates the Rocanville Parks and Recreation Board.

[18] Therefore, the Rocanville Parks and Recreation Board is a local authority pursuant to subsection 2(f)(v) of LA FOIP and I have jurisdiction over the Rocanville Parks and Recreation Board. Further, the Rocanville Parks and Recreation Board is responsible for the collection, use and/or disclosure of personal information in its possession and/or control.

Potash Corp Rocanville Community Hall Committee

[19] The Potash Corp Rocanville Community Hall Committee is responsible for managing and operating the local community hall. The Committee consists of volunteer members that sit for a two-year term. The Committee currently has eight members. The Chairperson for the Committee was also the Chairperson for the Rocanville Parks and Recreation Board and the Complainant's supervisor. The Recreation Office, where the Complainant worked, was located in the Potash Corp Rocanville Community Hall. The Recreation Director had responsibility for all access to the hall.

[20] The Bylaw that created the Rocanville Parks and Recreation Board also lists the Potash Corp Rocanville Community Hall Committee as a 'committee' and defines its role. *Bylaw 2017-12* provides that the Rocanville Parks and Recreation Board **oversees** the operations of all sport, culture and recreational facilities within the Town and surrounding area. However, the Potash Corp Rocanville Community Hall Committee, along with other committees listed, **manage and operate** the facilities and/or programs in the area. One member from each committee listed in the Bylaw sits on the Rocanville Parks and Recreation Board.

[21] It appears the Potash Corp Rocanville Community Hall Committee is a committee of the Rocanville Parks and Recreation Board via *Bylaw 2017-12*. Further, it does not appear to fit under any of the definitions of a local authority in LA FOIP. Therefore, I find that it is not a stand-alone local authority but rather a committee within another local authority, that being the Rocanville Parks and Recreation Board.

Complainant

[22] The Complainant was the Recreation Director for the Rocanville Parks and Recreation Board. The Complainant is no longer in that position. The Complainant asserted that she was an employee of the Town.

[23] The Town asserted the Complainant was an employee of the Rocanville Parks and Recreation Board. The Town did not have the authority to hire or fire the Complainant or set the pay scale or conditions for her position. The Town merely paid the Complainant's wages. Further, the Town asserted that it only paid her wages because it took over the Board's payroll function when the Board's Treasurer was unable to complete it. In addition, it asserted the Complainant's wages were paid from the Rocanville Parks and Recreation Board account, which was separate from the Town's accounts. The Town asserted, the Complainant reported to the Rocanville Parks and Recreation Board. Conversely, the Town also asserted the Complainant was classified as an employee of the Town, along with other paid board/committee members, only for getting benefits.

[24] I note that a letter from the Ministry of Labour Relations and Workplace Safety to the Town dated December 20, 2017, indicated the employer of the Complainant was the Town. I also note in the letter to the Complainant dated April 8, 2018, the Town stated to the Complainant, "...the Town undertook such actions to protect you as our employee". Yet, conversely, Town *Bylaw No. 2017-12* suggests the Complainant reported to the Chairperson of the Rocanville Parks and Recreation Board:

7. The Recreational Director shall report to and accept the decision of the Chairperson of the board on all activities and decisions, including the activities

and decisions of REDO. The Chairperson's authority is subject to approval and/or change by the Town and RM.

[Emphasis added]

[25] For purposes of this investigation, it is not necessary for my office to establish who the Complainant's employer was. However, it is necessary that the Town clear this confusion up going forward for all current and future Recreation Directors. The Town should formalize who works for the Town and who works for the Rocanville Parks and Recreation Board (or other board/committees) and what the obligations are for these roles.

[26] What I am concerned with in this report, is the nature of the working and reporting relationships amongst the different parties. It is unclear who the employer is and who reports to who. This creates issues in terms of privacy and the protection of personal information as has been demonstrated in this case.

[27] I recommend the Town, the Rocanville Parks and Recreation Board and the R.M. develop a written policy that breaks down the working and reporting relationships of employees, volunteers and any board members that hold additional roles such as supervising the Recreation Director.

2. Is the Complainant's personal information involved?

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

- The Complainant's name;
- The Complainant was suspended from the position of Recreation Director; and
- The Complainant declined to return to work after a paid suspension.

[29] Subsection 23(1) of LA FOIP defines what qualifies as personal information. Specifically, subsections 23(1)(b) and (k)(i) of LA FOIP provide that the employment history of an

individual or the name where it appears with other personal information qualifies as personal information pursuant to these provisions. Subsections 23(1)(b) 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:

...

(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;

...

(k) the name of the individual where:

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

...

[30] *Employment history* is the type of information normally found in a personnel file such as performance reviews, evaluations, disciplinary actions taken, reasons for leaving a job or leave transactions.

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

3. Did any of the local authorities inappropriately use or disclose the Complainant’s personal information?

[32] *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.

[33] *Disclosure* is the exposure of personal information to a separate entity, not a division or branch of the local authority in possession or control of that information.

[34] Based on the evidence before me, I find that the following uses and disclosures were made by the Town and the Rocanville Parks and Recreation Board:

- The Town made three disclosures of the Complainant’s personal information:

1. Disclosure to local residents;
 2. Disclosure to REDO; and
 3. Disclosure to the Rocanville Parks and Recreation Board (specifically to the Chairperson and/or supervisor of the Complainant).
- The Rocanville Parks and Recreation Board internally used the Complainant's personal information and disclosed it:
 1. To the Chairperson who shared it internally with the other Rocanville Parks and Recreation Board members and the Potash Corp Rocanville Community Hall Committee members via his email (constitutes a use); and
 2. To the R.M. via the same email.

[35] Subsection 28(1) of LA FOIP provides that a local authority may disclose personal information with the consent of the individual. Where a local authority does not have the consent of an individual, it must have authority under subsection 28(2) or section 29 of LA FOIP for its disclosures of personal information. In this case, the Town and the Rocanville Parks and Recreation Board did not have the consent of the Complainant.

[36] Subsection 28(2)(s) of LA FOIP and subsection 10(g)(ii) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) respectively provides:

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:

...
(s) as prescribed in the regulations.

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:

...
(ii) the terms or circumstances under which a person ceased to be an employee of a local authority, including the terms of any settlement or award resulting from the termination of employment;

[37] Section 27 of LA FOIP is the provision that deals with authority for use of personal information. Subsection 27(b) of LA FOIP provides that a local authority can use personal information for a purpose for which it can be disclosed. In other words, where there is authority to disclose, a local authority can also use it for that purpose. Subsection 27(b) 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:

...

(b) for a purpose for which the information may be disclosed to the local authority pursuant to subsection 28(2).

[38] In order for a local authority to be able to rely on any provision in LA FOIP for its use and/or disclosure of personal information, it must also abide by the *need-to-know* and *data minimization* principles. Authority to use and disclose only exists when these principles are abided by. These two important principles underlie Part IV of LA FOIP. *Need-to-know* requires a local authority to disclose only on a need-to-know basis. *Data minimization* requires a local authority to disclose the least amount of personal information necessary for the purpose.

[39] Based on the evidence before me, I find that the Town's disclosure to the Rocanville Parks and Recreation Board (specifically to the Chairperson and/or supervisor of the Complainant) was appropriate. The Rocanville Parks and Recreation Board had a role in the Complainant's employment and would need to know what was occurring in order to take certain actions such as covering duties of the Recreation Director and filling the vacant position. I also find that the Rocanville Parks and Recreation Board's disclosure to the R.M. was appropriate. The R.M. had a need-to-know the information because it was involved in dealing with other allegations the Complainant had made against the Chairperson and/or supervisor of the Complainant. I also find that the internal use of the Complainant's personal information by the Rocanville Parks and Recreation Board was appropriate. Specifically, the email sent by the Chairperson and/or supervisor of the Complainant to the other Rocanville Parks and Recreation Board members for the same reasons noted above.

- [40] However, I find that the Town's disclosure to local residents and REDO were not appropriate because more personal information than was necessary for the purpose was disclosed. I will explain my reasons below.
- [41] The Town asserted that the purpose for the disclosure to local residents was to dispel rumours and slanderous allegations. The Town asserted that the purpose for the disclosure to REDO was that there were many activities planned for the Christmas period with late night shopping events. Further, the business owners wanted to know what was going on and needed to be "informed of the basics quickly." Finally, Christmas was a busy time for the Recreation Director with organizing late night shopping events and programs for children.
- [42] I do not accept that a Town wide email telling residents that the Complainant was "suspended until further notice" was necessary. My office counted 51 email addresses in the email sent to REDO. I also do not accept that in order to meet its identified purpose, 51 members of REDO needed to know that the Complainant had "declined to return to work" after a "paid suspension" and that the Town was obliged to accept the Complainant's "resignation". Even if REDO provided some funding to the Rocanville Parks and Recreation Board, that did not entitle it to the employment history of the Complainant. To achieve its identified purpose, the Town simply needed to inform local businesses and REDO that the Recreation Director was no longer in the position and that alternative arrangements would be made to ensure the activities overseen by the Recreation Director would be covered.
- [43] Therefore, although the Town had a provision to rely on and the discretion to release certain details, it did not adhere to the *need-to-know* and *data minimization* principles when it disclosed too much of the Complainant's personal information to local residents and REDO. Therefore, I find that the Town did not have authority for these disclosures.

[44] Finally, the Chairperson shared the Complainant's personal information with the Potash Corp Rocanville Community Hall Committee members in his email. I find that this was an inappropriate use of the Complainant's personal information because these committee members did not have a need-to-know the Complainant had "self terminated" as Recreation Director. This finding is supported by the Chairperson's follow up email to the Potash Corp Rocanville Community Hall Committee members on December 13, 2017. In that email, the Chairperson refers to his December 11, 2017 email stating, "It was intended to go to the Rec board, the RM and Rocanville Town. I inadvertently sent it to the Rec board, the RM and Rocanville Hall. Please delete the email and do not discuss its contents, it was never intended for you." The Rocanville Parks and Recreation Board simply needed to inform the Potash Corp Rocanville Community Hall Committee members that the Recreation Director was no longer in the position and that alternative arrangements would be made to ensure the activities and events related to the Hall, that were overseen by the Recreation Director, would be covered.

4. Was the duty to protect the Complainant's personal information met?

[45] Subsection 23.1 of LA FOIP provides:

23.1 Subject to the regulations, a local authority shall establish policies and procedures to maintain administrative, technical and physical safeguards that:

- (a) protect the integrity, accuracy and confidentiality of the personal information in its possession or under its control;
- (b) protect against any reasonably anticipated:
 - (i) threat or hazard to the security or integrity of the personal information in its possession or under its control;
 - (ii) loss of the personal information in its possession or under its control; or
 - (iii) unauthorized access to or use, disclosure or modification of the personal information in its possession or under its control; and
- (c) otherwise ensure compliance with this Act by its employees.

[46] LA FOIP also requires local authorities to have policies and procedures in place to protect personal information. Policy and procedures should include how personal information will be protected from unauthorized collection, use and or disclosure, how it will be securely

stored and securely destroyed after its designated retention period. Not having appropriate written policy and procedures in place for the protection of personal information is a violation of section 23.1 of LA FOIP.

[47] I recommend the Town, the Rocanville Parks and Recreation Board and the R.M. take immediate steps to develop policy and procedures that are compliant with section 23.1 of LA FOIP for the protection of personal information within each local authority.

[48] The Town, the Rocanville Parks and Recreation Board and the R.M. should be cautious when disclosing personal information to external parties. It is appropriate and prudent to have confidentiality agreements or non-disclosure agreements in place where there is an ongoing sharing of personal information back and forth. It is especially appropriate to have one in place with the supervisor that oversees the Recreation Director position. If no contract or agreement is retained, a local authority is limited in its ability to hold external parties accountable when something goes wrong and there is a privacy breach. It could also be found responsible in the absence of an appropriate contract or agreement.

[49] Therefore, I recommend the Town, the Rocanville Parks and Recreation Board and the R.M. take immediate steps to establish confidentiality or non-disclosure agreements between the parties. This should include a confidentiality agreement with the supervisor that oversees the Recreation Director position.

IV FINDINGS

[50] I find that there was personal information of the Complainant involved.

[51] I find that the Town had authority to disclose the Complainant's personal information to the Rocanville Parks and Recreation Board pursuant to subsections 28(2)(s) of LA FOIP and 10(g)(ii) of the LA FOIP Regulations.

- [52] I find that the Rocanville Parks and Recreation Board had authority to disclose the Complainant's personal information to the R.M. pursuant to subsections 28(2)(s) of LA FOIP and 10(g)(ii) of the LA FOIP Regulations.
- [53] I find that in making the disclosures to local residents and REDO, the Town did not abide by the *need-to-know* or *data minimization* principles. As such, I find that the Town can not rely on subsections 28(2)(s) of LA FOIP and 10(g)(ii) of the LA FOIP Regulations for these disclosures.
- [54] I find that in sharing the Complainant's personal information with the Potash Corp Rocanville Community Hall Committee, the Rocanville Parks and Recreation Board did not abide by the *need-to-know* or *data minimization* principles. As such, I find that the Rocanville Parks and Recreation Board cannot rely on subsection 27(b) of LA FOIP for this use of the personal information.

V RECOMMENDATIONS

- [55] I recommend the Town and Rocanville Parks and Recreation Board provide a letter of apology to the Complainant for disclosing the Complainant's personal information to local residents, REDO and sharing with the Potash Corp Rocanville Community Hall Committee.
- [56] I recommend the Town, the Rocanville Parks and Recreation Board and the R.M. take immediate steps to establish confidentiality or non-disclosure agreements between the parties. This should include a confidentiality agreement with the supervisor that oversees the Recreation Director position.
- [57] I recommend the Town, the Rocanville Parks and Recreation Board and the R.M. take immediate steps to develop policy and procedures that are compliant with section 23.1 of LA FOIP for the protection of personal information within each local authority.

[58] I recommend the Town, the Rocanville Parks and Recreation Board and the R.M. take immediate steps to develop a written policy that breaks down the working and reporting relationships of employees, volunteers and any board members that hold additional roles such as supervising the Recreation Director.

Dated at Regina, in the Province of Saskatchewan, this 27th day of May 2019.

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