



Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 086-2017

Rural Municipality of Rosthern No. 403

September 13, 2017

Summary:

The Rural Municipality of Rosthern No. 403 (the RM) had forwarded an email that contained the Complainant's personal information to an individual who is not an RM employee, council member, or Hamlet board member. The Information and Privacy Commissioner (IPC) made a number of findings including the disclosure of the Complainant's personal information was a privacy breach and the lack of understanding of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) contributed to the privacy breach. He made a number of recommendations including ensuring that the individual to whom the Complainant's personal information was released delete and destroy copies of the email, that the RM revise its email policy, and that the RM provide LA FOIP training to its employees, council members and Hamlet board members.

I BACKGROUND

- [1] The Hamlet of Neuanlage's (the Hamlet) website has a form that individuals may fill out to request information from the Hamlet. The form requires that the individual provide their name and e-mail address. It also requests the individual's phone number, how the individual heard about the Hamlet, and a description of the individual's inquiry. Below is a screenshot of the form:

You are here: [Home](#) » [Contact us](#)

Contact us

If you want more information, fill in this form. We will get back to you as soon as possible.

Name*

Email*

Phone number

How did you hear about us?

Describe your request

- [2] All the submissions from the Hamlet’s website are sent to one general email account. All Hamlet board members have access to the one general email account.
- [3] On October 4, 2016, the Complainant submitted correspondence to the Hamlet by filling out the form with his name, email address, and telephone number. The correspondence was sent to the Hamlet’s general email account. On that same day, the email was forwarded to a RM councillor and to all Hamlet board members. Then, the RM councillor forwarded a copy of the email to the RM’s Acting Administrator and the Reeve. The RM councillor then forwarded the email to an individual (Individual A) who is not an RM employee, council member, or Hamlet board member.
- [4] Next, on October 7, 2016, a Hamlet board member had included the Complainant’s correspondence (which included his name and email address) in an email that he forwarded to the RM councillor. Then, on October 11, 2016, the RM councillor forwarded the Complainant’s correspondence to Individual A.
- [5] The Complainant then submitted an access to information request to the RM. He received copies of the two emails sent by the RM councillor to Individual A and discovered that his personal information was disclosed without his knowledge or consent.

[6] The Complainant submitted a privacy complaint to the RM. The RM sought the advice of a solicitor, who conducted an investigation and made recommendations. The recommendations included issuing an apology to the Complainant and instituting an email policy.

[7] The RM sent a copy of its solicitor's investigation report to the Complainant as well as an apology. The Complainant was dissatisfied so he requested that my office undertake an investigation.

II DISCUSSION OF THE ISSUES

[8] The RM is a "local authority" as defined by subsection 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

1. Is personal information involved?

[9] Subsection 23(1) of LA FOIP defines personal information 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:

...

(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;

[10] In order to determine whether something is personal information, the following must be considered:

1. Is there an identifiable individual?
2. Is the information personal in nature?

[11] First, the Complainant is the identifiable individual. Second, the Complainant's name, email address and telephone number is personal in nature. The information is not related to the Complainant in a professional or business capacity but is personal to the Complainant.

[12] I find that personal information is involved.

2. Was there a disclosure of the Complainant's personal information without authority?

[13] Disclosure is the sharing of personal information with a separate entity, not a division or branch of the local authority. Before disclosing personal information, a local authority must have authority under sections 28 or 29 of LA FOIP. A disclosure without authority constitutes a privacy breach.

[14] In its submission to my office, the RM explained that the emails were disclosed to Individual A to obtain his advice on how to respond to the Complainant. The RM suggested that forwarding the Complainant's correspondence to Individual A was for a purpose consistent with the purpose for which the information was provided. That is, the Complainant had submitted correspondence (along with his contact information) to facilitate discussion and to request answers to his questions. To respond to those questions, the RM Councillor forwarded the emails to Individual A for advice. Therefore, subsection 28(2)(a) of LA FOIP would have authorized the disclosure. Subsection 28(2)(a) 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:

(a) for the purpose for which the information was obtained or compiled by the local authority or for a use that is consistent with that purpose;

[15] Ultimately, the RM concluded that the disclosure of the Complainant's personal information was contrary to LA FOIP.

[16] I agree with the RM's conclusion. I find that the disclosure of the Complainant's personal information to Individual A is contrary to LA FOIP. Local authorities should be able to seek advice from its employees, contractors, or any other person that is specifically engaged in an advisory role. However, disclosing personal information to individuals whose relationship to the local authority is unknown and/or unofficial is not appropriate. The RM's solicitor described this privacy breach as "minor" since it was a single phone number and email address that was disclosed to one person. However, only the affected individual(s) can determine whether a privacy breach is "minor" or otherwise. After all, individuals affected by a privacy breach are the ones who ultimately bear the consequences of a privacy breach.

3. Did the RM respond to the privacy breach adequately?

[17] My office recommends that local authorities take the following five steps when responding to a privacy breach:

- Contain the breach,
- Notify affected individuals,
- Investigate the breach,
- Prevent future breaches, and
- Write a privacy breach report.

[18] I will consider each of these steps to determine if the RM adequately responded to the privacy breach.

Contain the breach

[19] To contain the breach is to recover the personal information and/or to stop the unauthorized practice when the local authority learns of the breach.

[20] Based on the RM's submission, I find that the RM has not contained the breach. The RM did not recover the Complainant's personal information from Individual A. In this case, it should have requested that Individual A delete the email (from his inbox and from the trash folder) and to destroy any physical copies of the email as well. Then, it should have

requested Individual A to send a written confirmation that the Complainant's personal information had been deleted and destroyed.

[21] In the course of this investigation, my office recommended that the RM contact Individual A to delete electronic copies of the email and destroy any physical copies, and that it request Individual A send a written confirmation to the RM that he has done so. In a letter dated September 8, 2017, the RM's solicitor indicated that the RM is prepared to commit to complying with this recommendation and will do so on an immediate basis.

Notify affected individuals

[22] In some cases, affected individuals are unaware that their personal information was involved in a privacy breach. Therefore, it is important for the local authority to notify the affected individuals so that they can take steps to protect themselves from potential harm. It is also an opportunity for the local authority to apologize for the privacy breach and to advise the affected individuals of the steps it is taking to prevent similar privacy breaches in the future.

[23] In this case, the affected individual is the Complainant. He was already aware of this privacy breach so he did not necessarily need to be notified of the breach. Nevertheless, the RM's Acting Administrator sent a letter dated April 25, 2017 to the Complainant apologizing on behalf of the RM for the privacy breach and to advise him that the RM would be implementing policies suggested by its solicitor to prevent a similar privacy breach in the future.

Investigate the breach

[24] It is important that local authorities investigate the privacy breach to determine what caused the breach. Making such a determination will help in the next step in responding to a privacy breach, which is to prevent future breaches.

[25] The RM's submission does not explicitly pinpoint a cause for the breach but it suggests that the lack of an email policy that provides guidance to RM employees and council members caused this privacy breach. I find that the lack of an email policy would be a contributing factor for this privacy breach. I will discuss later the solicitor's recommendation for an email policy in the next step "Prevent future breaches".

[26] Earlier, I found that the RM's disclosure of the Complainant's personal information was not authorized by LA FOIP. I also note the confidentiality provision in subsection 92(e) of *The Municipalities Act*, which provides:

92 Councillors have the following duties:

...
(e) subject to the bylaws made pursuant to section 81.1, to keep in confidence matters discussed in private or to be discussed in private at a council or council committee meeting until discussed at a meeting held in public;

[27] By disclosing the Complainant's personal information to Individual A, the councillor may have breached his duty to keep matters private until it is discussed at a meeting held in public. Therefore, I find that the lack of understanding of LA FOIP requirements and *The Municipalities Act* may have also contributed to the privacy breach.

Prevent future breaches

[28] The RM's solicitor made recommendations to the RM on how to prevent a similar privacy breach in the future. Below is a summary of the recommendations:

- 1) That the RM consider registering its own domain name and assigning an RM email address to each member of council and to each employee;
- 2) That the RM adopt a policy that includes the following:
 - a. RM email is only to be used for RM business,
 - b. that councillors and employees be vigilant with respect to the forwarding of emails and that lengthy email trains should be avoided at all costs;
 - c. that no email received by the councillor or employee should be forwarded unless authorized by the sender, required by law, or to be sent to legal counsel for advice.

[29] The RM should have its own email system. The Complainant provided my office with a copy of the records he had received from the RM. It appears that council members and Hamlet board members use their own personal or business email accounts to conduct RM business. Such a practice puts into question how the RM maintains its records pursuant to subsection 116(1) of *The Municipalities Act*, which provides:

116 (1) A council shall establish a records retention and disposal schedule, and all documents of the municipality shall be dealt with in accordance with that schedule.

[30] Furthermore, without its own email system, the RM lacks the ability to implement safeguards to protect information, including personal information that is submitted to it. Finally, by allowing council members and Hamlet board members to use their own personal or business email addresses, the RM's search for records when responding to access to information requests is greatly complicated because the RM will likely have to search the personal and/or business email accounts for responsive records. I recommend that the RM implement its own email system and that council members, Hamlet board members, and RM employees use only that email system to conduct RM and/or Hamlet business.

[31] In terms of an email policy, my office was notified on August 16, 2017 that the RM recently introduced an email policy that requires all administration staff, Reeve, councillors, and foreman to use a RM of Rosthern e-mail account for RM business. It is as follows:

All office administration staff, Reeve and Councillors and Foreman will be set up with an RM of Rosthern e-mail. This e-mail to be used for all RM business, and other usage of an RM e-mail address is not to take place. All matters relating to the Councilor's political involvement (nominations, election campaigns and other similar matters) are not covered by the Act and are not an activity of the RM, any such matters should not be handled through the RM's e-mail account.

All members of the RM staff and Council shall be vigilant with respect to the forwarding of e-mail communication, and lengthy e-mail trails should be avoided at all costs.

No e-mail received as Councillor or employee shall be forwarded outside the RM system, unless authorized by the sender, required by law, or to be sent to legal counsel for advice.

[32] Adopting an email policy is a good step forward in preventing a similar privacy breach in the future. However, the email policy should also include the following:

- Emails must be promptly saved into the RM's corporate filing system (whether it be paper and/or electronic filing system) so that the RM can manage records in accordance with its retention and disposal schedule;
- That council members, Hamlet board members, and employees collect, use and/or disclose personal information in accordance with LA FOIP;
- That council members, Hamlet board members, and employees use appropriate safeguards to protect their email accounts including requiring a user name and a strong password to access the email account;
- That any mobile device that enables access to the email account has appropriate safeguards such as requiring a strong password and encryption. Such mobile devices should not be left unattended and stored securely to prevent unauthorized access;
- To provide guidance to council members, Hamlet board members, and employees on how to respond to a privacy breach if they suspect a privacy breach has occurred. This may require the RM designating an employee as the Privacy Officer and to have any suspected privacy breaches reported to him/her.

[33] I recommend that the RM revise its email policy to include the above.

[34] Finally, I recommend that the RM provide annual training to its employees, council members, and Hamlet board members so that they are in compliance with LA FOIP and *The Municipalities Act*. Training should cover topics such as what to do when the RM receives an access to information request, what personal information can be collected, used, and/or disclosed, how records (including emails) should be managed, and the confidentiality requirements under *The Municipalities Act*. Ideally, employees should receive training when they are first hired and they should be given privacy refresher training annually after that. Similarly, council members and Hamlet board members should be given the training when they are first elected and then given privacy refresher training annually. Finally, employees, council members, and Hamlet board members should sign confidentiality agreements on an annual basis, so they are reminded of their responsibility to keep matters confidential pursuant to *The Municipalities Act*. If the RM requires assistance, I suggest that it contacts the Ministry of Government Relations, the Ministry of Justice (Access and Privacy Branch), and the Saskatchewan Association of Rural Municipalities (SARM) for assistance.

III FINDINGS

[35] I find that personal information is involved.

[36] I find that the disclosure of the Complainant's personal information to Individual A is contrary to LA FOIP.

[37] I find that the RM has not contained the breach.

[38] I find the RM has contacted the Complainant about the privacy breach.

[39] I find that the lack of an email policy would be a contributing factor for this privacy breach.

[40] I find that the lack of understanding of LA FOIP requirements and *The Municipalities Act* may have also contributed to the privacy breach.

IV RECOMMENDATIONS

[41] I recommend that the RM follow through with its commitment of contacting Individual A and requesting that he delete electronic copies of the email, destroy any physical copies of the email, and requesting that he send a written confirmation to the RM that he has deleted and destroyed the email.

[42] I recommend that the RM implement its own email system and that council members, Hamlet board members, and RM employees use only that email system to conduct RM and/or Hamlet business.

[43] I recommend that the RM adopt an email policy that includes the following:

- Emails must be promptly saved into the RM's corporate filing system (whether it be paper and/or electronic filing system) so that the RM can manage records in accordance with its retention and disposal schedule;

- That council members, Hamlet board members, and employees collect, use and/or disclose personal information in accordance with LA FOIP;
- That council members, Hamlet board members, and employees use appropriate safeguards to protect their email accounts including requiring a user name and a strong password to access the email account;
- That any mobile device that enables access to the email account has appropriate safeguards such as requiring a strong password and encryption. Such mobile devices should not be left unattended and stored securely to prevent unauthorized access;
- To provide guidance to council members, Hamlet board members, and employees on how to respond to a privacy breach if they suspect a privacy breach has occurred. This may require the RM designating an employee as the Privacy Officer and to have any suspected privacy breaches reported to him/her.

[44] I recommend that the RM provide training to its employees, council members, and Hamlet board members so that they are in compliance with LA FOIP and *The Municipalities Act*.

Dated at Regina, in the Province of Saskatchewan, this 13th day of September, 2017.

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