



INVESTIGATION REPORT 090-2017

City of Saskatoon

August 24, 2017

Summary:

The Complainant alleged his privacy was breached when the City of Saskatoon (the City) used a video recording from surveillance cameras to investigate whether the Complainant, a bus driver, conducted himself appropriately during a shift. The Complainant also alleged his privacy was breached when the City used and disclosed his personal information for the purpose of a grievance hearing. The Information and Privacy Commissioner found that the City had authority under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to use the Complainant's personal information for the purpose of its investigation. Further, he found that the City had authority to use and disclose the Complainant's personal information for the purpose of the grievance hearing. The IPC recommended that the City update all its signs in its buses to include the contact information of a City employee who can answer questions about the surveillance cameras.

I BACKGROUND

[1] There are three incidents involving the Complainant. Below is a description of the incidents.

Incident #1 – City investigation into whether cyclist was struck

[2] On August 19, 2016, a cyclist was allegedly struck by the mirror of a Saskatoon Transit bus. The City of Saskatoon (the City) undertook an investigation into the incident, which included obtaining and reviewing video recording from the surveillance cameras installed on its buses. The City used the video recording to determine if the cyclist was hit.

Incident #2 – City investigation into Complainant’s entire shift on August 19, 2016

[3] Stemming from Incident #1, the City used a video recording from its surveillance cameras to investigate whether the Complainant, as the bus driver, conducted himself inappropriately during his entire shift on August 19, 2016. Prior to viewing the video recording, the City sought the consent of the Complainant so that the City and a union representative could view the video. This will be discussed later in this report.

Incident #3 – Grievance hearings

[4] The Complainant’s employment was terminated. He filed a grievance with the union. The City then used and disclosed still photographs of the Complainant for the purposes of the grievance process.

[5] The Complainant alleges that the City’s use and the disclosure of the still photographs for the grievance process is an invasion of his privacy. In his complaint letter dated April 19, 2017 to the City, he said the following:

I would like to file a complaint and ask for you to investigate that on the 19th day of August, 2016 I received a call from my supervisor at Saskatoon Transit with regards to an alleged incident that involved allegedly hitting a cyclist on 8th st [sic] with the mirror of my bus. They then change their statement stating they were looking into something else. They stated after watching video of incident and found I did not hit cyclist, they watched another four hours of me. They also sent my Union still pictures that they displayed to people. I feel that this was an invasion of my privacy under the Privacy Act.

[6] The City conducted an investigation and concluded that the complaint “has not been unsubstantiated”. The Complainant was dissatisfied with the City’s investigation so he requested my office to investigate.

[7] This investigation report is organized so that it analyzes the City’s authority to collect personal information, then the City’s authority to use personal information, and finally the City’s authority to disclose personal information.

II DISCUSSION OF THE ISSUES

[8] The City 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?

[9] When conducting an investigation into an alleged privacy breach, my office must first determine whether there is “personal information” involved. The definition of “personal information” is found at subsection 23(1) of LA FOIP and provides 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;

[10] Incident #1 involves two individuals, the cyclist and the Complainant. First, I find that Incident #1 involves the cyclist’s personal information as defined by subsection 23(1) of LA FOIP because the video recording would include the cyclist’s image, his actions, and whether or not he was hit by the mirror of the bus or not. Second, I find that Incident #1 involves the personal information of the Complainant as the bus driver. The video recording reveals how he carried out his responsibility as the bus driver. In the past, my office has found that information that may appear in an employee’s personnel file, such as details of an employee’s performance or disciplinary action, would constitute employment history. Therefore, this type of information would be personal information as defined by subsection 23(1) of LA FOIP.

[11] Incident #2 involves two individuals, the Complainant and a passenger. First, similar to Incident #1, I find that Incident #2 involves the Complainant’s personal information because he reveals how he carried out his responsibility as a bus driver. Second, I find that Incident #2 involves the personal information of the passenger. It reveals her image

and her actions. This type of information would be personal information as defined by subsection 23(1) of LA FOIP.

[12] Incident #3 involves the Complainant's image in the still photographs. I find that this type of information qualifies as personal information as defined by subsection 23(1) of LA FOIP.

2. Did the City have authority to collect personal information through surveillance?

[13] In Investigation Report 034-2015, my office investigated the City's video and audio surveillance on its buses. In that report, my office found that the City has authority pursuant to section 24 of LA FOIP to collect personal information through its video surveillance.

[14] In that report, my office's analysis was that section 24 of LA FOIP provides 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. Section 24 provides as follows:

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] The City's activity is public transit. To provide public transit, the safety and security of the bus driver and passengers must be maintained. Surveillance is one method to maintain safety and security. Therefore, my office found the primary purpose for the collection is for public transit and that surveillance is a consistent purpose. The City has authority under section 24 of LA FOIP to conduct surveillance.

a. Did the City sufficiently notify the public and the Complainant of the purpose for its collection of personal information?

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

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.

i. Passengers

[17] To notify passengers on the bus, the following sign appears inside buses:

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

[18] Similar to my office's finding in Investigation Report 034-2015, I find that the sign complies with subsection 25(2) of LA FOIP. In that investigation report, my office recommended that the City provide the contact information of a City employee who could answer questions about the surveillance. Since that investigation dealt with access to transit, the City said it would include the contact information of a City employee to all registered access transit users in a newsletter.

[19] I recommend that the City update all its signs so that it includes the contact information of a City employee who can answer questions about the surveillance cameras.

ii. Complainant

[20] In addition to the signs on buses, the City's Privacy Breach Incident Report indicates that the Complainant started as a transit operator in 2007. By the summer of 2008, all buses had surveillance cameras. A memo entitled "Video Cameras on Buses" was sent in November 2008 to all transit operators that provided as follows:

Saskatoon Transit strives to protect the safety and security of staff, transit users and members of the public. Also important to Saskatoon Transit is the protection of Transit property and the property of the public.

[21] The City also indicated to my office that employees of the transit division received information about the surveillance cameras through basic training and a training manual. The City also has the following policies and procedures on its surveillance cameras:

- Video Surveillance Policy, last updated March 1, 2010
- Transit Bus Video Surveillance, dated October 2, 2007
- Transit Video Surveillance, effective date March 21, 2016.

[22] Through the signage on the buses, which the Complainant had to see, and the November 2008 memo, the Complainant had to be aware of the surveillance cameras and its purpose.

3. Did the City have the authority to use the personal information to investigate Incident #1?

[23] Since the City has the authority to collect personal information for the primary purpose of public transit and the consistent purpose of maintaining safety and security, then my office must determine if it had authority to use the personal information to investigate Incident #1. Subsection 27(a) of LA FOIP provides that local authorities can use personal information for the purpose for which personal information is obtained or compiled (or for a consistent purpose). Section 27 provides as follows:

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

[24] The City advised my office that the Complainant's supervisor filled out and signed a form called *Video Request Form* and requested video for Incident #1. The form indicated the type of incident that was being reviewed is "Cyclist possibly hit".

[25] The City's use of the video recording (containing personal information) to investigate Incident #1, is for the purpose for which the information was obtained or compiled, which is to ensure safety and security. I find that the City's use of the personal information to investigation Incident #1 was authorized by subsection 27(a) of LA FOIP.

4. Did the City have the authority to use the personal information to investigate Incident #2?

[26] As a result of viewing the video recording to investigate Incident #1, the City used the video recording of the Complainant's entire shift on August 19, 2016 to investigate Incident #2. My office must determine if the City had authority to use the personal information in the video recording to investigate Incident #2.

[27] As noted earlier, subsection 27(a) of LA FOIP provides that local authorities can use personal information for the purpose for which personal information is obtained or compiled (or for a consistent purpose). Also noted earlier, the purpose for which personal information is obtained through surveillance is to maintain safety and security.

[28] The Complainant's supervisor filled out and signed another *Video Request Form* and requested video for Incident #2, which is the entire shift of the Complainant on August 19, 2016. This is the same day that the cyclist was allegedly hit by the bus. The form indicated that the type of incident being reviewed is "Inappropriate conduct".

[29] The City needed to determine if the Complainant, as the bus driver, was adhering to safe driving practices. The City used the video recording from the Complainant's entire shift on August 19, 2016 to determine if the behavior of both the Complainant and a passenger drew his attention away from operating the bus safely.

[30] The City's use of the video recording (containing personal information) to investigate Incident #2 is for the purpose for which the information was obtained or compiled, which is to maintain safety and security. I find that the City's use of the personal information to investigate Incident #2 was authorized by subsection 27(a) of LA FOIP.

[31] Surveillance cameras in the workplace are highly invasive for employees. Local authorities must take steps to ensure they are still respecting employee's privacy rights under LA FOIP when using surveillance cameras. In this case, I find that the manner in which the City collected and used the Complainant's personal information was in compliance with LA FOIP. For example, the City limited its collection and use of the

video recording to the Complainant's shift on August 19, 2016. It did not access any video recording beyond that shift. Further, the City did not randomly access the video recording of the Complainant but it was prompted to view the video recording because a cyclist was allegedly hit by the mirror of the bus. I find that the City's collection and use of the video recording was reasonable in this case.

5. Did the City have authority to use the Complainant's personal information for the purpose of the grievance hearing (Incident #3)?

[32] The City took still photographs from the video recording and used it for the purpose of the grievance hearings. In its Privacy Breach Incident Report, the City explained that the Complainant had filed a grievance with his union. Grievance hearings occurred on October 6, 2016 and November 22, 2016 where photographs were submitted by the City as exhibits.

[33] Subsection 27(b) of LA FOIP provides that a local authority may use personal information for a purpose for which the information may be disclosed to the local authority. It 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).

[34] The grievance hearing is a proceeding before a tribunal. Subsection 28(2)(s) of LA FOIP and subsection 10(f) of the LA FOIP Regulations allow for personal information to be disclosed for the purpose of conducting a proceeding before a tribunal. Subsection 28(2)(s) of LA FOIP and subsection 10(f) of the LA FOIP Regulations provide as follows:

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:

...

(f) for the purpose of commencing or conducting a proceeding or possible proceeding before a court or tribunal;

[35] Therefore, I find that the City's use of the personal information for the purpose of the grievance hearing is authorized pursuant to subsections 27(b) and 28(2)(s) of LA FOIP, and subsection 10(f) of the LA FOIP Regulations.

6. Did the City have authority to disclose the Complainant's personal information for incident #2?

[36] The City disclosed the Complainant's personal information to a union representative during its investigation into whether the Complainant was adhering to safe driving practices (incident #2). This disclosure is in accordance with the City's policy *Transit Bus Video Surveillance* which provides:

6. Video Recording Viewing Steps

All recorded incidents must be documented and safeguarded as described in this Policy. Video surveillance recordings will be downloaded when an incident is reported by a Transit employee, Supervisor/Manager, and member of the general public. To that end:

- The System Operator or Technical Advisor will pull the video recorder hard drive and download the video footage.
- **ATU 615 will be notified by the System Operator if viewing of recorded video footage may result in disciplinary action against an employee.**
- Subject to undertaking the normal cause of action to investigate an incident (statements taken from complainant, respondent and witnesses), the System Operator may view the recorded video footage if required, and to verify the outcome of the investigation. Whereby a determination of what happened in the incident cannot be verified through the normal course of the investigation, downloaded video footage will be used to make a determination of the investigation. **ATU 615 will be invited to participate in viewing the recording.**

[emphasis added]

[37] Prior to disclosing the Complainant's personal information to the union for the purpose of the City's investigation, the City sought the Complainant's consent. The consent form is entitled "Saskatoon Transit Service: Video Release Form" and indicated that the video would be released for the following:

Pending investigation: cyclist and inappropriate conduct.

Video will be viewed by [name of two service supervisors], [name of Human Resources Consultant], [name of Transit Instructor], and [name of union representative].

[38] The Complainant signed and dated the form August 29, 2016. I find that the City's disclosure of the Complainant's personal information is authorized by subsection 28(1) of LA FOIP, which provides:

28(1) No local authority shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 29.

7. Did the City have authority to disclose the Complainant's personal information for the purpose of the grievance hearing (incident #3)?

[39] In a letter dated April 19, 2017 to the City, the Complainant indicated he felt that it was an invasion of privacy when the City sent "still pictures" of him to his union.

[40] As noted earlier, the City indicated that the Complainant had filed a grievance with his union. Grievance hearings occurred on October 6, 2016 and November 22, 2016 where photographs were submitted by the City as exhibits.

[41] As quoted earlier, subsection 28(2)(s) of LA FOIP and subsection 10(f) of the LA FOIP Regulations authorizes a local authority to disclose personal information for the purpose of conducting a proceeding before a tribunal. I find the City's submission of photographs as exhibits for the grievance hearing is authorized by subsection 28(2)(s) of LA FOIP and subsection 10(f) of the LA FOIP Regulations.

IV FINDINGS

- [42] I find that all three incidents involve personal information.
- [43] I find that the City has authority under section 24 of LA FOIP to collect personal information.
- [44] I find that the City's signs on its buses are in compliance with subsection 25(2) of LA FOIP.
- [45] I find that the City's use of the personal information to investigate Incident #1 was authorized by subsection 27(a) of LA FOIP.
- [46] I find that the City's use of the personal information to investigate Incident #2 was authorized by subsection 27(a) of LA FOIP.
- [47] I find that the City's use of the personal information for the purpose of the grievance hearing is authorized pursuant to subsections 27(b) and 28(2)(s) of LA FOIP, and subsection 10(f) of the LA FOIP Regulations.
- [48] I find that the City's disclosure of the Complainant's personal information to the union for Incident #2 is authorized by subsection 28(1) of LA FOIP.
- [49] I find the City's submission of photographs as exhibits for the grievance hearing is authorized by subsection 28(2)(s) of LA FOIP and subsection 10(f) of the LA FOIP Regulations.

V RECOMMENDATION

- [50] I recommend that the City update all its signs so that it includes the contact information of a City employee who can answer questions about the surveillance cameras.

Dated at Regina, in the Province of Saskatchewan, this 24th day of August, 2017.

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