



Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 114-2017

Town of Ituna

March 16, 2018

Summary:

The Office of the Information and Privacy Commissioner (OIPC) received a complaint alleging that the Town of Ituna (Ituna) breached the privacy of an individual by publishing the individual's personal information in multiple formats including on Ituna's website and local newspapers. Upon investigation, the Commissioner found that Ituna did not establish that it had authority under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to disclose the Complainant's personal information. Further, the Commissioner found that Ituna did not establish that it abided by the data minimization and need-to-know principles underlying LA FOIP. The Commissioner recommended Ituna take immediate steps to remove any remaining public postings of the Complainant's personal information, provide a written apology to the Complainant for the disclosures, develop policy and procedures to guide Ituna in the future when making decisions on disclosing personal information publicly. Finally, the Commissioner recommended Ituna Council and administration complete access and privacy training for LA FOIP within the next six months with the training to occur annually going forward.

I BACKGROUND

- [1] The Commissioner was raised and went to school in the Town of Ituna (Ituna). Although no conflict exists today, the Commissioner has taken no part in this investigation and has delegated the Director of Compliance to make all decisions related to this investigation. The only thing that has occurred is that the Report has gone out under the Commissioner's name after being reviewed and approved by the Director of Compliance.

[2] On March 23, 2017, my office received a complaint regarding an alleged breach of privacy. The Complainant alleged that Ituna breached his privacy when it published his personal information in multiple formats. The complaint includes the following concerns:

- Ituna Council made a motion [number] which read, “to put a news release regarding the Investigation of harassment in the Ituna and [name] newspapers and the Town of Ituna website.”
- Ituna Council identified confidential information through motion [number removed] which reads “Council makes motion to seek legal opinion in regards to [title removed] invoice on harassment against [Complainant].”
- [newspaper]
- [newspaper]
- Ituna website
- In a court action between another individual and Ituna, Ituna filed an affidavit with the harassment report entered as evidence, thereby making it an open public document.

[3] The Complainant asserted the disclosures of his personal information were unauthorized. The Complainant first raised his concerns with Ituna on March 28, 2017. In a letter dated April 7, 2017, Ituna responded to the Complainant indicating that it would remove the news release from its website. The other concerns raised by the Complainant do not appear to have been addressed.

[4] On July 9, 2017, my office provided notification to both Ituna and the Complainant advising that my office 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 Ituna provide my office with a copy of its internal privacy breach investigation report. It arrived at my office on June 21, 2017. In it, Ituna asserted that no breach of privacy had occurred.

II DISCUSSION OF THE ISSUES

[5] Ituna is a “local authority” pursuant to subsection 2(f)(i) of LA FOIP.

1. Is there personal information and/or personal health information involved?

[6] Our 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 primary privacy activities is engaged, i.e. collection, use and/or disclosure.

[7] Subsection 23(1) of LA FOIP provides a list of examples of what would qualify as personal information. However, the list is not meant to be exhaustive. There can be other types of information that would qualify as personal information that is not listed. Part of that consideration involves assessing if the information has both of the following:

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

[8] In its submission, Ituna asserted that no names or personal information was made open to the public.

[9] Based on what has been provided to my office, the Complainant takes issue with Ituna posting his personal information in:

- A public meeting where two motions were carried;
- Two newspapers;
- On Ituna’s website; and
- In an affidavit attached as an exhibit.

[10] The Complainant provided copies of each of the published documents. I reviewed the meeting minutes where the two motions were carried. Both motions were carried at the same public meeting. One motion states “Council makes motion to seek legal opinion in regards to [company name] invoice on harassment against [Complainant].” The second

motion states “To put a news release regarding the investigation of harassment in the [names two newspapers] and the Town of Ituna website.”

[11] I also reviewed the newspaper posts and the post on Ituna’s website. The posts are all identical. The posts state in part that “In the last year the town has had a harassment investigation against [Complainant]” and “At the conclusion of the investigation, the results found definite acts of harassment on multiple occasions by [Complainant] toward [another individual].”

[12] Finally, I reviewed a portion of the affidavit filed with the Court. Paragraph 21 indicates that “A copy of the [harassment report] is attached as Exhibit “C” to my affidavit.” This confirms the Complainant’s assertion that the report was submitted as evidence to the Court. Generally, court records would be outside of LA FOIP’s application.

[13] In order for the information involved to be considered personal information, it must be about an identifiable individual. *Identifiable individual* means that it must be reasonable to expect that an individual may be identified if the information were disclosed. The information must reasonably be capable of identifying particular individuals because it either directly identifies a person or enables an accurate inference to be made as to their identity when combined with other available sources of information (data linking) or due to the context of the information found in the record.

[14] The removal of an individual’s name, alone, does not necessarily sufficiently de-identify information. Identifying variables can be classified as one of the following:

- Directly identifying variables can be used to uniquely identify an individual either by themselves or in combination with other readily available information. Examples include name, phone number or email address.
- Indirectly identifying variables (quasi-identifiers) can be used to probabilistically identify an individual either by themselves or in combination with other available information. Examples can include sex, date of birth or postal code.

(Canadian Institute for Health Information (CIHI), *Best Practice Guidelines for Managing the Disclosure of De-Identified Health Information*, 2010)

[15] Sufficient quasi-identifiers make it possible to identify an individual even in absence of a name. In this case, the quasi-identifiers are that there is an investigation of harassment against the Complainant in Ituna and the dates which can narrow down the timeframe.

[16] In a small town such as Ituna, it is highly probable that most, if not all, residents would be able to figure out who the Complainant was. It is also possible to re-identify a person if information is publicly available such as through public registries, internet searches and local libraries. If a person wanted to find out who the Complainant was, armed with the quasi-identifiers released by Ituna, it wouldn't be hard to figure out through publicly available sources.

[17] Therefore, due to the sufficient quasi-identifiers, I find that the information in the motions, newspapers, website post and affidavit is identifiable. Therefore, the Complainant can be identified. Information that relates to employment history qualifies as personal information pursuant to subsection 23(1)(b) of LA FOIP which 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;

[18] *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. It does not include work product. Being investigated for harassment would be information considered part of a person's employment history.

[19] Therefore, I find that the Complainant's personal information is present in the published materials. As such, LA FOIP is engaged on the facts in this case. Specifically, Part IV of LA FOIP is engaged which focuses on Ituna's responsibilities for the protection of personal information.

2. Did Ituna have authority to disclose the Complainant's personal information?

[20] Based on the complaint, it appears that the privacy activity at issue is Ituna "disclosing" the personal information of the Complainant. This occurred through publishing it in newspapers, on its website, motions in its public council meetings and by filing an affidavit which included the harassment report.

[21] *Disclosure* is the sharing of personal information with a separate entity, not a division or branch of the public body in possession or control of that information.

[22] Subsection 28(1) of LA FOIP provides that a local authority cannot disclose personal information unless it has the consent of the individual or unless one of the subsections of 28(2) or section 29 of LA FOIP applies. Subsection 28(1) 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.

[23] It is clear that Ituna did not have the consent of the Complainant to disclose the personal information. Further, section 29 would not apply in this circumstance. Therefore, Ituna would have to be relying on one of the sub provisions of 28(2) of LA FOIP to disclose the Complainant's personal information in each case.

[24] In its submission, Ituna did not indicate which provisions of subsection 28(2) of LA FOIP or *The Local Authority Freedom of Information and Protection of Privacy Regulations* it was relying on to disclose the Complainant's personal information.

[25] While subsection 120(1) of *The Municipalities Act* requires that council and council meetings conduct their meetings in public, subsection 120(2) *The Municipalities Act* provides that meetings may be closed to the public if the matters being discussed are within the exemptions in Part III of LA FOIP. Subsection 120(2)(a) of *The Municipalities Act* provides:

120(2) Councils and council committees may close all or part of their meetings to the public if the matter to be discussed:

(a) is within one of the exemptions in Part III of *The Local Authority Freedom of Information and Protection of Privacy Act*;

[26] Part III of LA FOIP includes subsection 15(1)(b)(ii). Subsection 15(1)(b)(ii) of LA FOIP provides that a head may refuse to give access to a record that discloses agendas or the substance of deliberations of meetings where matters discussed at the meetings could be refused pursuant to Part III or Part IV of LA FOIP. Subsection 15(1)(b)(ii) of LA FOIP provides:

15(1) A head may refuse to give access to a record that:

...

(b) discloses agendas or the substance of deliberations of meetings of a local authority if:

...

(ii) the matters discussed at the meetings are of such a nature that access to the records could be refused pursuant to this Part or Part IV.

[27] Part IV of LA FOIP includes subsection 28(1). Subsection 28(1) of LA FOIP provides that a local authority is not to disclose personal information in its possession or control without the individual's consent except if the disclosure is authorized by LA FOIP. Since Part IV of LA FOIP enables a local authority to refuse access to personal information, then council and council committees may close all or part of its meetings to the public if the matters being discussed include personal information.

[28] In conclusion, all or part of the Council meeting where the motions were put forward in this case could have gone 'in camera'. This does not appear to have been taken into consideration. As a result, Ituna disclosed the Complainant's personal information in a public meeting.

[29] *Data minimization* means that a public body should always collect, use and/or disclose the least amount of personal information necessary for the purpose.

[30] *Need-to-know* means that only those with a legitimate need to know for the purposes of delivering mandated services should have access to personal information.

[31] Both of these principles underlie LA FOIP. In this case, Ituna did not establish that it abided by these principles when it disclosed the Complainant's personal information. It appears that too much information was posted in the newspapers and on Ituna's website. Further, individuals who did not have a need to know the personal information of the Complainant were given access.

[32] Search engines index websites and make information published on websites easily searchable. Furthermore, technology is enabling organizations to gather and analyze personal information from various sites to create profiles on individuals. Such profiling can have undesirable results such as identity fraud or theft, embarrassment, and physical or emotional harm. Publishing information on the World Wide Web has a much broader audience than information published in other formats. Information published online can easily be copied and disseminated. Information, especially if it is inaccurate or unflattering, can haunt or damage an individual's reputation long after the information was published. (SK OIPC Blog, May 15, 2017, *Council Agendas and Meeting Minutes*)

[33] A privacy breach occurs when there is disclosure of personal information without authority under LA FOIP to do so. Ituna has not identified its authority to have disclosed the Complainant's personal information. Therefore, without establishing authority existed at the time of each disclosure, I find that a privacy breach occurred in this case.

[34] Further, I find that Ituna did not establish that it abided by the data minimization and need-to-know principles in each case.

IV FINDINGS

[35] I find that Ituna did not establish it had authority under LA FOIP to disclose the Complainant's personal information.

[36] I find that Ituna did not establish that it abided by the data minimization and need-to-know principles underlying LA FOIP.

V RECOMMENDATIONS

[37] I recommend that Ituna take immediate steps to remove any remaining public postings of the Complainant's personal information.

[38] I recommend Ituna provide a written apology to the Complainant for the disclosures of the Complainant's personal information.

[39] I recommend that Ituna develop policy and procedures to deal with deciding when it is and is not appropriate to share personal information publically.

[40] I recommend that Ituna Council and administration complete access and privacy training for LA FOIP within the next six months. This training should occur annually going forward.

Dated at Regina, in the Province of Saskatchewan, this 16th day of March, 2018.

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