



INVESTIGATION REPORT 127-2017

Village of Marsden

September 18, 2017

Summary:

The Complainant alleged that a former elected official of the Village of Marsden (the Village) disclosed her personal information when the official repeated her opinion at a public meeting. The opinion was about the elected official. The Commissioner found that it did not qualify as personal information in the context of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) because it was not in recorded form before the disclosure. He also found that even if it did qualify, it would qualify as personal information of the elected official because it was an opinion about the elected official. The Commissioner recommended the Village take no further action.

I BACKGROUND

- [1] The Complainant is a former employee of the Village of Marsden (the Village). On May 1, 2017, there was a meeting between the Complainant, another employee of the Village, and three elected officials where working relationships were discussed. The Complainant alleged one of the elected officials then breached her privacy at a public council meeting of the Rural Municipality of Manitou Lake #442 (the RM) on May 4, 2017. She alleged that during the RM meeting, the elected official in question made a statement about the Complainant and the other employee's opinion of the elected official's actions. The elected official admits he made such a statement at the council meeting.
- [2] On May 12, 2017, the Complainant made a written complaint to the Village. On June 23, 2017, the Village responded to the Complainant indicating that the information in

question did not qualify as her personal information and the incident did not qualify as a privacy breach.

[3] On June 27, 2017, the Complainant requested an investigation by my office. The same day, my office provided notification to both the Village and the Complainant of my intention to undertake a privacy breach investigation.

[4] The elected official has since resigned his position.

II DISCUSSION OF THE ISSUES

1. Does LA FOIP apply in these circumstances?

[5] LA FOIP applies to privacy matters when three elements are present. The first element is a local authority, the second element is personal information and the third element is if the personal information is in the possession or control of the local authority.

[6] The Village qualifies as 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;

[7] The Complainant alleged that an elected official disclosed her personal information in a public setting. She indicated that the elected official made a statement that revealed the Complainant and her coworker’s opinion of the elected official’s actions.

[8] Subsection 23(1) of LA FOIP provides a definition of personal information. Some of the relevant clauses are 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:

...

(f) the personal opinions or views of the individual except where they are about another individual;

...

(h) the views or opinions of another individual with respect to the individual;

[9] One requirement of the definition of personal information is that it needs to be in a recorded form. In other words, the personal information must be on a record. LA FOIP defines record in subsection 2(j) of LA FOIP as follows:

2 In this Act:

...

(j) “record” means a record of information in any form and includes information that is written, photographed, recorded or stored in any manner, but does not include computer programs or other mechanisms that produce records;

[10] Three of the individuals who participated in the meeting on May 1, 2017 where the statement was first alleged to have been made have indicated that no one took notes at that meeting. This includes the Complainant, her coworker and the elected official in question. My office asked the elected official whether he had made any other notes or records regarding this statement. He indicated that he had not done so. My office asked if he had made speaking notes to aid with his remarks to the RM on May 4, 2017. He indicated that he had, but the notes did not include a reference to the statement. He noted that the statement in question was made during an unplanned exchange during the conversation. Both the elected official and the Complainant have provided me with a copy of the elected official’s statement. The Complainant is also unaware of any records depicting the statement before the alleged disclosure occurred.

[11] The statement in question was made verbally. There is no evidence that a record of this statement was created before the alleged disclosure. Because it is not in recorded form, it does not qualify as personal information for the purposes of LA FOIP.

[12] I also note that the definition of personal health information found in *The Health Information Protection Act* (HIPA) does not carry the requirement that information must be in recorded form. This is an amendment I would like to see to both *The Freedom of Information and Protection of Privacy Act* (FOIP) and LA FOIP.

[13] It is also worthwhile to note that subsection 23(1)(f) of LA FOIP indicates that the personal opinions or views of the individual are the personal information of the individual, except when they are about another individual. Additionally, subsection 23(1)(h) of LA FOIP indicates that the views and opinions of another individual is the personal information of the subject individual. Therefore, the statement that the Complainant is referring to would qualify as the personal information of the elected official because it reflects an opinion about the elected official. I also note that, in her complaint, the Complainant claims that her coworker had made those comments, not herself.

[14] Further, subsection 23(2)(b) of LA FOIP also provides:

23(2) “Personal information” does not include information that discloses:

...

(b) the personal opinions or views of an individual employed by a local authority given in the course of employment, other than personal opinions or views with respect to another individual;

[15] Again, the personal information in question is of the elected official in question.

[16] I will not proceed to consider whether there was an unauthorized disclosure of the Complainant’s personal information because the statement in question does not qualify as the personal information of the Complainant in the context of LA FOIP.

III FINDINGS

[17] I find that the statement in question does not qualify as the Complainant's personal information for the purposes of LA FOIP.

[18] I find that LA FOIP does not apply.

IV RECOMMENDATIONS

[19] I recommend the Village take no further action.

Dated at Regina, in the Province of Saskatchewan, this 18th day of September, 2017.

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