



Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 174-2016

City of Warman

July 28, 2016

Summary:

The Complainant's husband alleged that the City of Warman (the City) unnecessarily included the Complainant's personal information in its response to a privacy complaint. The husband also alleged that the City unnecessarily copied the mayor and city councilors in its response. The Office of the Information and Privacy Commissioner (IPC) found that the City was authorized to use the personal information by including it in its response. The IPC found that it was appropriate for the mayor to have been copied on the response but found that the City did not demonstrate that the city councilors had a need-to-know that personal information. The IPC recommended that the City amend its policy so that city councilors are only provided personal information when a decision needs to be made and an item is on a Council or committee agenda or where in the opinion of the mayor, all councilors need-to-know.

I BACKGROUND

- [1] On May 6, 2016, the Complainant's husband (the husband) submitted a privacy complaint to the City Manager at the City of Warman (the City). This privacy complaint is discussed in my office's Investigation Report 118-2016.
- [2] The City Manager responded in an email dated May 27, 2016. The email included an attachment. The attachment was a letter dated May 25, 2016 addressing the husband's privacy complaint. The email was copied to the mayor and all six city councillors.

[3] The husband took issue with 1) the fact the Complainant's name was in the response, and 2) that the email was copied to the mayor and all six city councillors. He wrote an email to the City Manager outlining his concerns.

[4] The Acting City Manager responded to the husband in a letter dated July 5, 2016. He was not satisfied with the response so he requested my office undertake an investigation.

[5] On July 11, 2016, my office notified the City and the husband that it would be undertaking an investigation.

II DISCUSSION OF THE ISSUES

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

1. Does the information qualify as personal information as defined by section 23 of LA FOIP?

[7] Subsection 23(1)(k)(i) 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:

(k) the name of the individual where:

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

[8] In the City's letter dated May 25, 2016 to the husband, I note that the Complainant's name is in the letter. The letter also states that the Complainant provided her telephone number to the City in June 2009 for the purpose of a utility hook-up. I find that such information qualifies as personal information as defined by subsection 23(1)(k)(i) of LA FOIP.

2. Does the copying of the email to the mayor and city councilors qualify as a use?

[9] In the past, my office has defined “use” as the internal utilization of personal information by a public body and includes sharing of the personal information in such a way that it remains under the control of that public body.

[10] I find that copying the mayor and the city councilors qualifies as a “use” because the mayor and the city councilors are internal to the City.

3. Did the City comply with the need-to-know principle when copying the mayor and the city councilors?

[11] The City provided my office with a copy of its internal investigation report regarding the complaint. First, it explained that the mayor is the head of the City and is the individual within the City “that must oversee the process for any privacy related issue”.

[12] I agree with the City that the head is responsible under LA FOIP for privacy issues. Subsection 2(e) of LA FOIP defines “head” as follows:

2(e) “head” means:

(i) in the case of a municipality, the mayor, reeve or chairperson of the local advisory committee, as the case may be;

[13] The head can delegate her authority to another officer within the local authority pursuant to section 50 of LA FOIP. In this case, the mayor of the City had not delegated her authority. Therefore, I find it appropriate that the mayor be copied on emails as it relates to the management of privacy issues. The City could change this if it wished by having the mayor delegate her authority or in its policy provide the mayor does not need to be copied.

[14] Second, the City explained that its policy is to include city council in any official correspondence. Therefore, all city councilors were copied on the email.

[15] I find that the City has not demonstrated that all the city councilors had a need-to-know this personal information. In the course of the investigation, my office recommended that

the City amend its policy so that city councilors are only included in correspondence where the councilor has a need-to-know. A city councilor would have a need-to-know if he or she requires the personal information in order to fulfill his/her duties as a city councilor. The City responded in a letter dated July 27, 2016, by stating that it believed good government decisions are made when all members of council receive and are included in official correspondence, including correspondence dealing with privacy issues. Including all members of council ensures that priority is given to privacy investigations. It asserted that it believed there is no time that it would be acceptable to include only some members of Council on correspondence nor did it foresee any situation where only some members of Council would be in the need-to-know.

[16] A distinction needs to be made between providing councilors personal information to make a decision and providing personal information where no decision is required. If an item is on an agenda of Council, then certainly all councilors should receive the same information. In this case, I am not aware that the decision was required. The copies were provided just to provide information. In addition, there may be the few cases where informing all members of Council about all the details of a privacy matter may affect the City's ability to investigate the privacy matter effectively. For example, a conflict of interest may exist between a resident and a member of Council. Or the privacy complaint may be made against a member of Council. I suggest the City amend its policy so that personal information is only provided to councilors when a decision needs to be made and an item is on a Council or committee agenda or where in the opinion of the mayor, all councilors need to know.

III FINDINGS

[17] I find that the information at issue qualifies as personal information as defined by subsection 23(1)(k)(i) of LA FOIP.

[18] I find that copying the mayor and the city councillors qualifies as a "use".

[19] I find it appropriate that the mayor be copied on communications as it relates to the management of privacy issues.

[20] I find that the City has not demonstrated that the city councillors had a need-to-know this personal information.

IV RECOMMENDATIONS

[21] I recommend the City amend its policy so that personal information is only provided to councilors when a decision needs to be made and an item is on a Council or committee agenda or where in the opinion of the mayor, all councilors need to know.

[22] I recommend that the City make it known to citizens when members of Council will be copied on correspondence.

Dated at Regina, in the Province of Saskatchewan, this 28th day of July, 2016.

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