



INVESTIGATION REPORT 176-2016

Town of Kindersley

September 26, 2016

Summary:

An individual submitted an access to information request to the Town of Kindersley (the Town). The Town notified a Third Party of the access to information request and disclosed the individual's name to the Third Party. The Office of the Information and Privacy Commissioner (IPC) found that *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) did not authorize the disclosure of the individual's identity to the Third Party. The IPC recommended that the Town implement policies and/or procedures on how to notify third parties when processing access to information requests. The IPC also recommended notifying the individual of the privacy breach, apologize, and let her know the steps it will take to prevent a similar breach in the future.

I BACKGROUND

- [1] An individual submitted a freedom of information request to the Town of Kindersley (the Town). The Town determined it would provide notice to a Third Party about the request, pursuant to section 33 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [2] In the course of notifying the Third Party of the request, the Town revealed the identity of the individual who submitted the request.
- [3] The individual was not satisfied with the Town's response to her freedom of information request so she appealed to my office. It was during the course of my office's review

(Review Report 151-2016) that it was discovered that the identity of the individual was revealed to the Third Party.

[4] On July 12, 2016, my office notified the Town that it would be undertaking an investigation. It requested that the Town provide an internal investigation report.

II DISCUSSION OF THE ISSUES

[5] The Town qualifies as a local authority pursuant to subsection 2(f)(i) of LA FOIP.

1. Was personal information involved?

[6] Subsection 23(1)(k) 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; or
- (ii) the disclosure of the name itself would reveal personal information about the individual.

[7] At issue is the name of an Applicant and the fact that she submitted an access to information request to the Town. I find that this information would qualify as personal information pursuant to subsection 23(1)(k) of LA FOIP.

2. Did the Town have authority under LA FOIP to disclose the Applicant’s name to the third party?

[8] When a local authority discloses personal information to an external party, it must have authority under LA FOIP to do so.

[9] In the course of conducting the review detailed in Review Report 151-2016, my office learned that the Town had disclosed the Applicant’s identity to the Third Party. My

office's understanding of this was based on the Town's letter dated August 3, 2016 to my office which included an attachment. The attachment was the Third Party's letter dated July 21, 2016 to the Town. In the letter, the Third Party advised the Town that its objection to the release of information was based on the Applicant's identity. The Applicant's husband is a business competitor of the Third Party. Further, the Third Party named the Applicant in its submission dated August 29, 2016 to my office for the review.

[10] In a letter dated September 16, 2016, the Town's legal counsel asserted that subsection 10(i) of the LA FOIP Regulations authorizes the disclosure of the Applicant's name to the third party. Subsection 10(i) of the LA FOIP Regulations provide:

10 For the purposes of clause 28(2)(s) of the Act, personal information may be disclosed:

...

(i) to another local authority or a third party in order to obtain information from that local authority or third party to respond to an inquiry from the individual to whom the information relates, to the extent necessary to respond to that inquiry;

[11] Subsection 10(i) of the LA FOIP Regulations only allows for the disclosure of personal information "to the extent necessary" to respond to an inquiry. The Town's legal counsel argued that it was important to reveal the identity of the Applicant to the third party. It argued the Third Party would need to know who was requesting access to the agreement between the Town and the Third Party before the Third Party could reasonably know if disclosure of the agreement would result in financial loss or gain or prejudice their competitive position unless they knew who was seeking access to the Agreement.

[12] I note that subsection 117(1)(a) of *The Municipalities Act* provides that any person is entitled at any time during regular business hours to inspect and obtain copies of any contract approved by council. Subsection 117(1)(a) of *The Municipalities Act* provides:

117(1) Any person is entitled at any time during regular business hours to inspect and obtain copies of:

(a) any contract approved by the council, any bylaw or resolution and any account paid by the council relating to the municipality;

[13] Disclosing the name of the Applicant is not necessary because any person is entitled to the agreement pursuant to subsection 117(1)(a) of *The Municipalities Act*. Prior to

entering into a contract with a municipality, the municipality should notify third parties that any person is entitled to inspect and obtain copies of the contract.

[14] Disclosing the Applicant's name to the Third Party was not necessary. Therefore, I find subsection 10(i) of the LA FOIP Regulations did not authorize the Town to disclose the Applicant's name to the Third Party.

[15] The Town's legal counsel suggested that subsection 28(2)(n) of LA FOIP allows a head of a local authority to exercise a judgement to disclose personal information where doing so clearly outweighs any invasion of privacy that may result from disclosure. He argued that disclosing the Applicant's name would be characterized as a minimal invasion of privacy if subsection 10(i) of the LA FOIP Regulations does not authorize disclosure. He stated:

Our point is that a different balancing of whether the public interest takes priority over an invasion of privacy would clearly need to be determined if the personal information being disclosed was more than one's name, address and telephone number. In the circumstances of this case, however, we respectfully submit that the disclosure of [Applicant's name] name could only reasonably be characterized as a minimal invasion of privacy even if it was not authorized by s. 10(i) of the LAFOIP Regulations, which we submit it was.

[16] Subsection 28(2)(n) of LA FOIP provides as follows:

(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

...

(n) for any purpose where, in the opinion of the head:

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure; or

(ii) disclosure would clearly benefit the individual to whom the information relates;

[17] I find that subsection 28(2)(n) of LA FOIP did not authorized the Town's disclosure of the Applicant's name to the Third Party. The Town's legal counsel argued that the public interest was to afford the Third Party the opportunity to consider and communicate with the Town based on full and complete information, including the identity of the party

requesting the record, whether it would consent to the release of access to the agreement or provide reasons why it believed access to the agreement ought to be refused by the Town clearly outweighs any invasion of privacy that may be caused to the Applicant.

[18] I disagree. If the Town wishes to afford the Third Party full and complete information, it should have notified the Third Party of subsection 117(1)(a) of *The Municipalities Act* prior to the Third Party entering into a contract with the Town. Any person, including the Applicant, is entitled to inspect and obtain a copy of any contract entered into with council approval by the Town.

[19] In the course of my office's investigation, my office recommended that the Town implement policies and/or procedures on how to notify third parties when processing access to information requests. The contents of the notice should be in accordance with subsection 33(2) of LA FOIP. The contents of the notice should not include the identity of the Applicant. The Town's legal counsel advised my office that the Corporate Clerk of Kindersley has been assigned to improve its procedures for LA FOIP, including creating forms and information sheets as well as posting information on the Town's website.

[20] I also recommend that the Town notify the Applicant of the privacy breach, apologize, and let her know the steps it will take to prevent a similar breach in the future.

IV FINDINGS

[21] I find that this information would qualify as personal information pursuant to subsection 23(1)(k) of LA FOIP.

[22] I find that the Town disclosed the Applicant's identity to the Third Party without authority under LA FOIP.

V RECOMMENDATIONS

[23] I recommend that the Town follow through with its intention on improving its procedures on LA FOIP as described in paragraph [20]. The procedures should address how the Town is to notify third parties when processing access to information requests.

[24] I recommend that the Town notify the Applicant of the privacy breach, apologize, and let her know the steps it will take to prevent a similar breach in the future.

Dated at Regina, in the Province of Saskatchewan, this 26th day of September, 2016.

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