



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **INVESTIGATION REPORT 261-2018**

### **City of Humboldt**

**March 8, 2019**

**Summary:** On October 16, 2018, the Complainant wrote to the City of Humboldt (City) to lodge a formal complaint against the manager of the Public Works department for breaching their personal information. The Complainant alleged that the manager disclosed their medical information to other employees at a staff meeting on May 31, 2018. The City responded to the complaint on November 13, 2018 and advised the Complainant that they had conducted an investigation and there was no evidence to support a breach occurred as alleged. On November 15, 2018, dissatisfied with the response from the City, the Complainant requested that my office investigate the matter. The Commissioner found that while there was evidence to support that the accused manager did not disclose medical information about the Complainant on May 31, 2018, the manager did breach the Complainant's personal information by disclosing to other employees that the Complainant had a medical condition requiring workplace accommodations. The Commissioner recommended that the City develop and implement a workplace accommodation policy that includes a section on how managers should handle concerns received from employees about workplace accommodations.

### **I BACKGROUND**

[1] On October 16, 2018, the Complainant, an employee of the City of Humboldt (City), wrote to the City to lodge a formal complaint against a manager of the Public Works department for breaching their personal information. The Complainant alleged that on May 31, 2018, the manager released their medical information to individuals present at a staff meeting.

[2] On November 13, 2018, the City responded to the Complainant's allegations and informed them that an investigation was conducted into the alleged privacy breach and that the results

of the investigation concluded that there was no evidence to support a breach of privacy occurred as alleged.

[3] On November 15, 2018, the Complainant, dissatisfied with the response from the City requested that my office investigate the matter. On November 21, 2018, my office provided notifications to both the City and the Complainant of its intention to investigate. In my office's notification to the City, my office requested:

- details of which section of *The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP)* the City of Humboldt relied on for the use of the information in question;
- details regarding how the City of Humboldt took into consideration the 'data minimization' and the 'need-to-know' principles when the information in question was used;
- internal investigation report; and
- copies of any relevant policies or procedures related to the matter.

## II DISCUSSION OF THE ISSUES

### 1. Does my office have jurisdiction?

[4] The City is a local authority pursuant to subsection 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to conduct this investigation.

### 2. Did a privacy breach occur? If so, did the City of Humboldt appropriately manage the privacy breach?

[5] The Complainant alleges that on June 1, 2018, the day after the breach allegedly occurred, the Complainant was asked by co-workers why the Complainant was at work since staff had been informed that the Complainant would be off work indefinitely. The Complainant

alleges that co-workers advised them that it was during a meeting on May 31, 2018 that the manager of the Public Works department had disclosed to everyone who was present, details of the Complainant's medical situation. The Complainant was not present during this meeting.

[6] The Complainant proceeded to file a formal complaint with the City of Humboldt, who undertook an investigation. According to the City's submission, the investigation was conducted by a third party Human Resources consultant along with two managers from the City who had no working relationship with the Complainant, or with the manager who allegedly breached the Complainant's personal information. As part of the investigation, the City interviewed the Complainant, the accused manager, and four employees who were at the alleged staff meeting when the privacy breach occurred. The four employees interviewed were individuals identified as witnesses by the Complainant.

[7] The City's submission indicates that their investigation found that:

- There was no actual staff meeting scheduled on May 31, 2018. Co-workers of the Complainant had questions regarding the Complainant being away from work and asked the accused manager questions in this regard, in a group setting.
- The accused manager does not recall their exact words when answering the questions from the Complainant's co-workers, but does not believe they disclosed any medical information.
- The first witness interviewed stated that they "[do] not recall the Public Works manager saying anything about [the Complainant's] medical condition."
- The second witness indicated that they could not recall what the manager said but remembers another co-worker making comments about the [Complainant] and the accused manager said something about legal requirements to accommodate for a medical condition.
- The third and fourth witnesses could not recall the words that were said during the exchange on May 31, 2018. The third witness did state however that the accused manager never disclosed any confidential medical information about the Complainant.

- After the four witnesses were interviewed, it was determined that no further interviews were necessary.
- The City required all individuals interviewed as part of the investigation to sign confidentiality declarations.

[8] Furthermore, the City's submission to my office of November 28, 2018, regarding the discussion between the manager and the other employees on May 31, 2018, stated that the City:

...took into consideration data minimization by simply advising employees that the Employer had a legal obligation to accommodate [the Complainant] due to a medical condition but at no time did they disclose any medical information or limitations. It was simply relayed that [the Complainant] had submitted medical information to be on light duties...and given that all light duties had been exhausted [the Complainant] was given the option to apply for Short Term Disability... The employees had observed [the Complainant] doing light duties for an extended period of time prior to May 31, and were frustrated and were asking questions; however, the Employer preserved [the Complainant's] confidentiality by simply advising the other employees that [they were] on light duties, which the other employees needed to know due to safety reasons.ie/ heavy lifting.

[9] My office inquired as to whether any employees, including the accused manager, could have taken any meeting minutes or notes from the exchange of May 31, 2018. The City indicated that through their investigation they found that the exchange was not a staff meeting, but a brief discussion about why the Complainant would not be at work that day. It was a discussion that occurred just before employees were getting ready to leave or have lunch. As such, no notes were submitted as part of the City's investigation and none are available for review.

[10] Managers often face dilemmas about how much information they can disclose to their team, when their team may be impacted by workplace accommodations provided to one of the team members. It is not uncommon for employees to raise concerns with managers about another employee, or to have complaints about unique working arrangements being provided to another employee. In these circumstances, it is important for managers to restrict the information they provide to others about employees who are being

accommodated – whether that is because of a temporary or permanent mental or physical condition or disability.

[11] Subsection 23(1) of LA FOIP defines “personal information” as:

**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:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(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;

(c) information that relates to health care that has been received by the individual or to the health history of the individual;

...

[12] While the City conducted a thorough investigation into the alleged privacy breach, the City’s investigation was focused on whether the actual medical condition or limitations of the Complainant were disclosed. In that respect, the City’s investigation found that the medical information of the Complainant was not disclosed and I agree that there is sufficient evidence to support such a conclusion.

[13] When a copy of this draft report was provided to the City on February 27, 2019, the City confirmed that the information provided to my office on November 28, 2018, paragraph [8] of this report, was not accurate. The City now confirms that the accused manager did not advise employees that the Complainant had exhausted all light duties and that the Complainant was given the option to apply for short-term disability. The City now confirms that the manager only disclosed to employees on May 31, 2018 that the City had a legal obligation to accommodate the Complainant due to a medical condition.

[14] Although the manager did not disclose the Complainant’s actual medical condition or limitations, the submission from the City, and the recent clarification provided, indicates that the manager did acknowledge to other employees on May 31, 2018, that the

Complainant had a medical condition requiring accommodation. Such information still falls within the meaning of personal information in LA FOIP.

[15] The City is required to protect the personal information of the Complainant and can only disclose the Complainant's personal information with the Complainant's consent, or in accordance with any of the permissible uses or disclosures contained in LA FOIP. The City in this case did not have consent and the disclosure of personal information does not fall within any of the permissible disclosures in LA FOIP. As such, I find that the City breached the Complainant's personal information when the manager of the Public Works department disclosed the fact that the Complainant has a medical condition requiring ongoing workplace accommodation with other employees on May 31, 2018.

[16] As stated in the City's submission, the accommodations being provided to the Complainant involved a rearrangement of work duties for safety reasons. Employees affected by the rearrangement of work duties could have simply been advised that the Complainant was encountering difficulties in the workplace and that the City was obligated to assist the Complainant with overcoming those difficulties. There was no need to confirm any aspect of the Complainant's need for workplace accommodation. The manager in this case appears to have acted on the basis of communicating changes in their team and addressing the concerns and complaints of team members; so, while the manager breached the Complainant's personal information, the manager does not appear to have acted in bad faith.

[17] The City does not currently have a formal policy on workplace accommodations. I recommend that the City develop and implement a workplace accommodation policy that outlines:

- the accommodation process;
- the roles and responsibilities of employees at all levels;
- how managers should address concerns and questions from their employees about accommodations being provided to other employees; and
- a section on how the City will protect the personal information of employees.

[18] Having a clear and comprehensive workplace accommodation policy will assist the City in meeting its duty to protect personal information in accordance with subsection 23.1 of LA FOIP. It can also serve as a tool to communicate to employees at all levels what personal information may be collected, used, disclosed and retained as part of the workplace accommodation process. The City should follow guidance and requirements issued by the Saskatchewan Human Rights Commission related to workplace accommodations as it develops its policy. The City may also wish to consult resources developed by the Canadian Human Rights Commission, in particular the resource related to developing a workplace accommodation policy, available at <https://www.chrc-ccdp.gc.ca/eng/content/template-developing-workplace-accommodation-policy>.

#### **IV FINDING**

[19] I find that the City breached the Complainant's personal information on May 31, 2018 when the manager of the Public Works department shared that the Complainant had a medical condition that required workplace accommodation to other employees, but the manager did not do so in bad faith.

#### **V RECOMMENDATION**

[20] I recommend that the City develop and implement a workplace accommodation policy that includes a section on how managers should handle concerns received from employees about workplace accommodations.

Dated at Regina, in the Province of Saskatchewan, this 8<sup>th</sup> day of March, 2019.

Ronald J. Kruzeniski, Q.C.

Saskatchewan Information and Privacy  
Commissioner