



INVESTIGATION REPORT 282-2018

Rural Municipality of Parkdale

December 5, 2019

Summary:

The Commissioner received information from a third party regarding an alleged breach of privacy involving the Rural Municipality of Parkdale (the “R.M.”) and the personal information of a former employee who was deceased at the time. The Commissioner found that a breach occurred, and that the R.M. did not properly apply subsections 28(2)(e), (l), (n) and (p) and subsection 29(2) of *The Local Authority Freedom of Information and Protection of Privacy Act*. The Commissioner recommended that the R.M. ensure its policies and procedures for managing personal information include best practices that are outlined in the Report.

I BACKGROUND

- [1] On December 3, 2018, my office received information from a third party regarding an alleged breach of privacy involving the Rural Municipality of Parkdale (the “R.M.”). The R.M. disclosed, in meeting minutes it published to its website, the personal information of a deceased employee in relation to an appeal of compensation benefits the R.M. was undertaking.
- [2] On December 17, 2018, my office notified the R.M. it was undertaking an investigation into whether or not the R.M. had the authority to disclose the deceased employee’s personal information on its website. The R.M. has since taken down all its meeting minutes from its website.

[3] On January 18, 2019, my office received the R.M.'s submission, in which it cited subsections 28(2)(e), (l), (n) and (p) and subsection 29(2) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) as its authority to release this information. In its submission, the R.M. stated it did not believe that it was the 'origin' of the breach of personal information; it stated it believed the breach originated with the surviving spouse.

II DISCUSSION OF THE ISSUES

1. Does LA FOIP apply in these circumstances?

[4] LA FOIP is engaged when three elements are present: 1) there is a local authority; 2) there is personal information; and 3) the personal information is in the possession or control of the local authority.

[5] The R.M. 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;

[6] Subsection 23(1) of LA FOIP defines personal information. The relevant portions 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:

(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;

...

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

(d) any identifying number, symbol or other particular assigned to the individual;

...

(k) the name of the individual where:

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

[7] Upon review of eight separate copies of R.M. meeting minutes, which were previously published on the R.M. website, I note the following regarding the deceased individual:

Meeting Date	Type of Information Included
February 21, 2018	The individual's last name and a motion by the R.M. to appeal the compensation claim. The surviving spouse's name is also referenced in a different matter, but which is still related to the deceased.
March 7, 2018	The individual's name and a discussion of the compensation claim, compensation claim number, information related to the appeal, and details regarding the individual's medical information/medical history.
April 13, 2018	Compensation claim number and appeal status.
May 9, 2018	Compensation claim number and appeal status.
June 13, 2018	Compensation claim number and appeal status.
July 13, 2018	Compensation claim number and appeal status.
September 6, 2018	Compensation claim number and appeal status.
November 9, 2018	Compensation claim number and appeal status.

[8] Subsection 23(1)(a) of LA FOIP includes the identification that an individual has a disability, while subsection 23(1)(c) of LA FOIP describes that health information regarding the individual, including their health history or health care they have received, is considered "personal information". In particular, the March 7, 2018 meeting minutes go into great depth and detail regarding the individual's health status, including elements such as the length of time for which they were treated for health issues and by the type of specialist. As a best practice for minute taking or making, this is just not necessary.

[9] In several meeting minutes, the compensation claim number of the deceased individual is referenced, sometimes alongside the name of the deceased. Pursuant to subsection 23(1)(d) of LA FOIP, personal information includes any identifying number assigned to the individual, while subsection 23(1)(k)(i) of LA FOIP includes the name of an individual that appears alongside other personal information that relates to the individual.

[10] I find that the information about the deceased individual that has been noted qualifies as personal information pursuant to LA FOIP, and as such, is in the possession and control of the R.M.

2. Did the R.M. have authority to disclose the deceased individual's personal information on its website?

[11] Disclosure is the sharing of personal information with a separate entity. By publishing the council meeting minutes on its website, the R.M. was disclosing the individual's personal information contained in those records.

[12] Subsection 28(1) of LA FOIP provides that a local authority may disclose personal information with the consent of the individual or in accordance with subsection 28(2) or section 29 of LA FOIP. In addition, I note section 10 of *The Local Authority Freedom of Information and Protection of Privacy Regulations* provides further circumstances in which personal information may be disclosed without consent of the subject individual.

[13] In its submission, the R.M. stated:

First and foremost, we are governed by the [sic] *Municipalities Act*, and must conduct our business in an open meeting. The legislation that we considered in our meetings was our LA FOIP policy, which was adopted in 2014, as well as sections 111, 116, 117, 119, of the [sic] *Municipalities Act*, and Sec 28.2 [sic] (e), (l), (n), (p) and Sec 29(2) of the LA FOIP Act.

[14] I will analyze separately each of these subsections of LA FOIP as the R.M. has applied them, and the relevant sections of *The Municipalities Act* as they apply.

Subsection 29(2) of LA FOIP

[15] Subsection 29(2) of LA FOIP provides:

29(2) Where, in the opinion of the head, disclosure of the personal information of a deceased individual to the individual's next of kin would not constitute an unreasonable invasion of privacy, the head may disclose that personal information before 25 years have elapsed after the individual's death.

[16] The R.M., in its submission to my office, did not make a clear argument that supported the release of information pursuant to subsection 29(2) of LA FOIP. It appears, however, that the R.M. felt this subsection applied because the surviving spouse publicly shared some of the deceased individual's personal information first. The R.M. stated, "We were not the origin of the breach, we simply responded. We considered, in that [surviving spouse] was the initial breach of personal information, LA FOIP s.29 (2) [sic] as it related to the 25 years, did not affect [surviving spouse]. [Surviving spouse] authorized the release of all information except [their] marriage certificate and birth certificate." The R.M. did not provide my office with documented proof of the latter claim regarding the marriage and birth certificates.

[17] Subsection 29(2) of LA FOIP provides that a local authority may share personal information of a deceased person with a "next of kin" if the disclosure would not constitute an unreasonable invasion of privacy. The R.M. did not share the deceased's personal information with a "next of kin", but rather shared it publicly.

[18] The R.M. also did not indicate or provide my office with evidence to support that the surrogacy provision outlined in subsection 49(a) of LA FOIP applied with respect to a personal representative of a deceased individual exercising the rights of the deceased in the administration of their estate.

[19] I find that the R.M. did not have authority to release the deceased's personal information pursuant to subsection 29(2) of LA FOIP.

Subsection 28(2)(e) of LA FOIP

[20] Subsection 28(2)(e) of LA FOIP provides:

28(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

...

(e) for the purpose of enforcing any legal right that the local authority has against any individual;

[21] With respect to this provision, the R.M. did not provide information or details in its submission as to what legal rights it was enforcing against the deceased individual.

[22] I find that the R.M. did not have authority to release the deceased's personal information pursuant to subsection 28(2)(e) of LA FOIP.

Subsection 28(2)(l) of LA FOIP

[23] Subsection 28(2)(l) of LA FOIP provides:

28(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

...

(l) where necessary to protect the mental or physical health or safety of any individual;

[24] The R.M. appears to have considered this provision based on protecting the health and safety of its council members and employees. I base this on the R.M.'s statement in its submission that, "council felt they needed to put out some factual information that would provide some insight to the public... council felt that their release of information was necessary to protect the health and safety of the municipality and municipal employees".

[25] In Investigation Report 107-2014, my office included a test for when applying exemptions involving the protection of the health and safety of any individual. The test is as follows:

1. There must be a reasonable expectation of harm;

2. Harm must constitute damage or detriment and not mere inconvenience; and
3. There must be a causal connection between use and the anticipated harm.

[26] To assess the first part of the test - reasonable expectation of harm - I reviewed the following, which the R.M. provided to my office: 1) copies of four emails received from four different individuals from the general public; and 2) an incident report completed by a R.M. employee who alleged they were shot at.

[27] Upon review of these documents, I am not convinced that the R.M. has demonstrated how the public knowing the deceased's personal information contained in these documents would necessarily prevent harm from coming to others. I note that the emails contained comments from third parties about how they perceived the R.M. managed the situation, and that the incident report included an unsubstantiated claim made by an R.M. employee, but the R.M. has not directly shown how releasing the deceased's personal information prevented what the R.M. felt was a reasonable expectation of harm.

[28] I find that the first part of the test has not been met and that the R.M. did not have authority to release the deceased's personal information under subsection 28(2)(1) of LA FOIP. I do not need to consider the second and third parts of the test.

Subsection 28(2)(n) of LA FOIP

[29] Subsection 28(2)(n) of LA FOIP provides:

28(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;

[30] The R.M. did not state which part of subsection 28(2)(n) of LA FOIP it was applying, but I note that subsection 28(2)(n)(ii) of LA FOIP would not apply in this situation, particularly when the R.M. has not stated that it released the deceased individual's information to benefit the deceased individual. The R.M. also did not state how, pursuant to subsection 28(2)(n)(i) of LA FOIP, release of the deceased's personal information was in the public interest.

[31] I find that the R.M. did not have authority to release the deceased's personal information pursuant to subsection 28(2)(n) of LA FOIP.

Subsection 28(2)(p) of LA FOIP

[32] Subsection 28(2)(p) of LA FOIP provides:

28(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

...

(p) if the information is publicly available, including information that is prescribed as publicly available;

[33] The R.M.'s submission did not make any specific arguments as to how this provision applied. The R.M. attached five news articles to its submission, but did not specifically demonstrate how the personal information of the deceased that the R.M. disclosed in its council meetings and meeting minutes was linked to these media articles. The R.M. would have first needed to match up these data elements (e.g. name, specific statements regarding health condition or treatment) and then demonstrate why and how this subsection of LA FOIP authorized the release of the deceased's personal information in the circumstances. For example, the R.M. would have had to state, something along the lines, "in article X, these are the specific pieces of the deceased's personal information that were publicly available and that match up to the personal information we included in council meetings and meeting minutes", and then provide an argument about why and how this subsection of LA FOIP provided authority to disclose these pieces of the deceased's personal information. This did not occur.

[34] I find that the R.M. did not have authority to release the deceased's personal information under subsection 28(2)(p) of LA FOIP.

[35] I wish to add that in reviewing the media articles, I note that some of the deceased's personal information was provided by the spouse, but I also note that the Reeve of the R.M. was interviewed and quoted. Some of the publicly available information was, therefore, made public by the R.M. This should not have occurred.

The Municipalities Act

[36] In its submission to my office, the R.M. also made arguments in support of its authority to disclose the deceased's personal information under *The Municipalities Act*. As I noted at paragraph [13], it stated that according to *The Municipalities Act*, it "must conduct our business in an open meeting". To this, it added that *The Municipalities Act* requires the R.M. to be "open and transparent... [to] provide information to our ratepayers".

[37] Among the sections of *The Municipalities Act*, that the R.M. cited, it cited section 117, which requires municipalities to make publicly available council minutes after council has adopted them. Subsection 120(1) of *The Municipalities Act*, which the R.M. did not cite, provides that council conduct their meetings in public, while subsection 120(2) of *The Municipalities Act* provides that council may close meetings to the public if the matters to be 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*;

[38] Subsection 4(2)(e) of *The Municipalities Act* provides that one of the general purposes of a municipality is to manage public assets. Subsection 4(2)(e) of *The Municipalities Act* provides:

4(2) The purposes of municipalities are the following:

...

(e) to provide wise stewardship of public assets.

[39] It appears to me that a legitimate need the R.M. council would have had, but which the R.M. did not raise in its submission, was to discuss the compensation claim in order to prepare its appeal. This activity is something that would align with the R.M.'s purposes pursuant to subsection 4(2)(e) of *The Municipalities Act*. In preparing its appeal, it seems reasonable to me that it would have required some of the deceased's personal information as part of its discussions. The question, though, is whether or not this provided the R.M. the authority to publicly disclose the deceased's personal information.

[40] Part III of LA FOIP includes subsection 15(1)(b)(ii), which 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**.

[Emphasis added]

[41] Part IV of LA FOIP includes subsection 28(1), which 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 enables a local authority to refuse access to personal information, then council should close parts of its meetings to the public if the matters being discussed include personal information. It would have been best practice for the R.M. to discuss the details of the compensation claim and the deceased's personal information in a closed meeting, but in the public meeting, pass a

motion that had basically no personal information. To do so, the R.M. would have needed to consider the need-to-know and data minimization principles that underlie Part IV of LA FOIP. *Need-to-know* requires a local authority to disclose only on a need-to-know basis. *Data minimization* requires a local authority to disclose the least amount of personal information necessary for the purpose.

[42] While I find that the R.M. had authority to disclose some of the deceased's personal information pursuant to provisions under *The Municipalities Act*, it appears that the R.M. provided more information to the general public than what was required. I recommend the RM, in the future, consider following the four best-practice steps:

1. If a R.M. council is discussing correspondence or a matter that contains sensitive personal information (such as health or financial information), the best practice is for the R.M. to provide council members with a redacted version of the personal information, or only the personal information that is necessary for the discussion. The discussion should be closed to the general public or held *in camera*. After coming out of the closed meeting, the R.M. should then pass a motion with basic or no personal information.
2. In meeting minutes, the R.M. should record the least amount of personal information, although best practice is to record no personal information. For example, the R.M. could in its minutes refer to "an Applicant", "a Complainant", "a Rate payer", "a Tax payer" or could use the initials of the person it is discussing.
3. If council includes personal information in its minutes, then before posting to its website, the best practice is to redact that personal information.
4. To help the public determine what personal information they provide to the R.M., the R.M. should provide notice, such as through pamphlets or information on its website, to the public about how the R.M. may include the personal information as part of public council or committee agenda meetings, or that the R.M. may publish it to its website. Such notice is in accordance with subsection 25(2) of LA FOIP, which provides:

25(2) A local authority that collects personal information that is required by subsection (1) to be collected directly from an individual shall, where reasonably practicable, inform the individual of the purpose for which the information is collected.

[43] I wish to add that a privacy breach occurs when there is disclosure of personal information without authority under LA FOIP. The R.M. has not demonstrated how any of the provisions of LA FOIP it has relied upon provided it with the authority to disclose the

deceased's personal information. Although the R.M. had a need to disclose some of the deceased's personal information as part of its council discussions, the R.M. went beyond and disclosed more of the deceased's personal information than was necessary for the purpose, which resulted in a breach of privacy.

[44] I recommend that the R.M. ensure its policies and procedures for managing personal information include the best practices I have outlined at paragraph [42]. I further recommend that the R.M., if it intends to repost its meeting minutes, redact all the deceased's personal information.

III FINDINGS

[45] I find that the information at issue qualifies as personal information pursuant to subsections 23(1)(a)(c)(d) and (k) of LA FOIP.

[46] I find that subsection 29(2) of LA FOIP does not authorize the disclosure of the deceased's personal information by the R.M.

[47] I find that subsections 28(2)(e), 28(2)(l), 28(2)(n)(i) and (ii) and 28(2)(p) of LA FOIP do not authorize the disclosure of the deceased's personal information by the R.M.

[48] I find that a privacy breach occurred when the R.M. disclosed more of the deceased's personal information than was necessary for the purpose.

IV RECOMMENDATIONS

[49] I recommend that the R.M. ensure its policies and procedures for managing personal information include the best practices I have outlined at paragraph [42].

[50] I recommend that the R.M., if it intends to repost its meeting minutes, redact all the deceased's personal information.

Dated at Regina, in the Province of Saskatchewan, this 5th day of December, 2019.

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