



## **INVESTIGATION REPORT 287-2018**

### **Prairie Spirit School Division No. 206**

**May 23, 2019**

#### **Summary:**

The Complainant, a former trustee for the Prairie Spirit School Board of Education, revealed that he consumed certain prescription medications, including cannabis, at Board meetings. Prairie Spirit School Division No. 206 (Prairie Spirit) alleged that its policies and law prohibited the Complainant from consuming these medications at Board meetings. It requested certain personal information from the Complainant so that it could accommodate the Complainant's needs. The Commissioner was not persuaded that Prairie Spirit had authority to collect the personal information in these circumstances. However, as the Complainant did not provide the personal information, he found that no privacy breach occurred. The Commissioner did, however, recommend changes to Prairie Spirit's policies.

#### **I BACKGROUND**

[1] The Complainant was a trustee for the Prairie Spirit School Board of Education (the Board). Prairie Spirit School Division No. 206 (Prairie Spirit) requested that the Complainant provide information about his prescription for cannabis and opioids for the purpose of planning to accommodate his medical condition. On November 27, 2018, the Complainant made a complaint to my office questioning Prairie Spirit's authority to collect and use this information.

[2] On December 17, 2018, my office notified both Prairie Spirit and the Complainant of my intention to undertake an investigation. Prairie Spirit was advised, on January 2, 2019, that the Complainant resigned from the Board.

## II DISCUSSION OF THE ISSUES

### 1. Does *The Local Authority Freedom of Information and Protection of Privacy Act* or *The Health Information Protection Act* apply in these circumstances?

[3] The privacy provisions of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) apply when three elements are present. The first element is personal information, the second element is a local authority, and the third element is if the personal information is in the possession or control of the local authority.

[4] Prairie Spirit qualifies as a local authority pursuant to subsection 2(f)(viii) of LA FOIP which provides:

2 In this Act:

...

(f) “local authority” means:

...

(viii) any board of education or conseil scolaire within the meaning of *The Education Act*;

[5] Personal information is defined by subsection 23(1) of LA FOIP. 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:

...

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

[6] The information in question relates to the Complainant’s use of certain medications. This is information that relates to the health history of the Complainant and health care he has received. Therefore, it qualifies as personal information pursuant to subsection 23(1)(c) of LA FOIP.

[7] Prairie Spirit intended to collect and use the personal information, which then would have been in the possession and control of Prairie Spirit.

[8] The Complainant also implied that *The Health Information Protection Act* (HIPA) applied to these circumstances. Subsection 23(1.1) of LA FOIP also provides:

23(1.1) On and after the coming into force of subsections 4(3) and (6) of *The Health Information Protection Act*, with respect to a local authority that is a trustee as defined in that Act, “personal information” does not include information that constitutes personal health information as defined in that Act.

[9] The term ‘trustee’ is defined in subsection 2(t) of HIPA. Prairie Spirit does not fit into this definition. Therefore, HIPA does not apply.

[10] LA FOIP applies in these circumstances.

**2. Did Prairie Spirit have the authority to collect the personal information in question?**

[11] On November 5, 2018, Prairie Spirit’s Board implemented Administrative Policy AP-514 *Medical Marijuana and Other Prescribed Medication Use* and Administrative Policy AP-515 *Recreational Substance Use* addressing the use of cannabis and other medications. These policies apply to employees of Prairie Spirit.

[12] Soon after, the Complainant voluntarily informed the Board Chair, Vice-Chair, Director of Education, and Deputy Director of People and Finance and Chief Financial Officer, by email, the fact that he has a prescription for cannabis and opioids. The emails also indicated that he has consumed these substances at board meetings. In the next two months, the Complainant volunteered other information about his consumption of these medications to Prairie Spirit and various members of the Board, including the nature of his injuries and a copy of his prescription for cannabis. He did not provide a copy of a prescription for opioids.

[13] Prairie Spirit was concerned about the Complainant's use of these medications at meetings of the Board. On November 23, 2018, the Board Chairperson and Vice Chair met with the Complainant to discuss concerns around the use of these medications at Board meetings. During the meeting, it was suggested that the situation be treated in the same manner as an accommodation issue would be treated for a Prairie Spirit employee. Part of this process would be requesting that the Complainant have his physician fill out a medical certificate describing the use of the medication.

[14] The medical certificate was a questionnaire developed by Prairie Spirit and was adapted to this particular situation. The questions to be completed on this form included:

- date of last visit to physician;
- date of next clinical review;
- if the Complainant has been referred to a specialist who would have relevant information concerning these issues;
- if the Complainant was fit to complete duties as a school division Board member;
- any specific medical restrictions or limitations that may affect Board duties;
- if there is any medication which must be administered during the typical Board meeting times;
- if the Complainant has been prescribed medical marijuana;
  - the dosage;
  - if and how the minimum dosage affects the Complainants mental or physical functions;
  - if and how the maximum dosage affects the Complainants mental or physical functions;
  - how the medication is administered;
- if the Complainant has been prescribed opioids;
  - the dosage;
  - if and how the minimum dosage affects the Complainants mental or physical functions;
  - if and how the maximum dosage affects the Complainants mental or physical functions;
- if there are any other medications, alternate forms of the medication, or actions that the Complainant could take or use as an alternative measure during the work day;
- if the physician has prescribed any other treatments for the Complainant;
- if the Complainant is following the physician's advice;
- if the Complainant takes any other medications or treatments that affect his mental or physical functions; and
- if the combined prescriptions causes impairment.

[15] The Complainant questioned Prairie Spirit's need and authority to collect this personal information.

[16] I have been asked to address whether the collection of the Complainants personal information would have been authorized by LA FOIP. Sections 24 and 25 of LA FOIP address collection as follows:

24 No local authority shall collect personal information unless the information is collected for a purpose that relates to an existing or proposed program or activity of the local authority.

25(1) A local authority shall, where reasonably practicable, collect personal information directly from the individual to whom it relates.

(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.

(3) Subsections (1) and (2) do not apply where compliance with them might result in the collection of inaccurate information or defeat the purpose or prejudice the use for which the information is collected.

[17] Prairie Spirit's submission indicated that it sought to collect the personal information with the consent of the Complainant and directly from the Complainant (after the physician had filled out the certificate). It noted that this was in compliance with subsection 25(1) of LA FOIP. I agree. Nevertheless, Prairie Spirit must also collect the personal information for a purpose that relates to one of its existing or proposed program or activity pursuant to section 24 of LA FOIP.

[18] Prairie Spirit indicated it was to be collected for the purpose of the accommodation process. Prairie Spirit's submission indicated that it is unusual to engage in accommodation arrangements for non-employee and non-students. Prairie Spirit and the Complainant did not have an employer-employee relationship. The Complainant was an elected official. He was responsible to his electors.

[19] The question also arises of what the Board was intending to accommodate. Generally, it is an employee who has a duty to inform its employer of the need for accommodation to

participate fully in the workplace. Prairie Spirit appears to indicate that individuals are not permitted to consume prescription cannabis and opioids at Board meetings. Prairie Spirit sent a letter to the Complainant dated November 28, 2018 indicating that the Complainant was not able to “bring medical marijuana onto school division property at any time...” but did not indicate what prevented the Complainant from doing so. The letter indicated that Prairie Spirit wished to accommodate his use of the medication as a result.

[20] I must then explore if the Complainant’s use of these prescribed medications are against policy or the law.

[21] As mentioned earlier in this Report, Prairie Spirit has recently adopted policies on the use of cannabis for a medical purpose and recreational substance use.

[22] Administrative Policy AP-514 *Medical Marijuana and Other Prescribed Medication Use* indicates that if an employee is required to use cannabis for a medical purpose while at work, they must inform their Supervisor and Human Resources. An employee is not required to disclose their specific medical diagnosis; however, they are required to provide a note from their doctor and a copy of the possession license. The policy also indicates that Prairie Spirit will work with the individual that requests accommodation. In the event that prescribed cannabis or other prescribed medication is deemed to pose a significant or potential hazard to students, the employee and/or other employees, Prairie Spirit will attempt to find alternative work for the employee. This policy does not specifically mention opioids, but it does indicate that employees are required to disclose their medical marijuana or other prescribed medication use to management if it will impact their ability to arrive and remain fit for duty.

[23] Administrative Policy AP-515 *Recreational Substance Use* also mentions accommodation for employees that ask for help due to a drug or alcohol dependency. This policy applies to “any legal or illegal drug used for recreational purposes including marijuana and alcohol”. This does not apply to medication for which an individual has a prescription and refers back to the *Medical Marijuana and Other Prescribed Medication Use* policy.

[24] These policies apply to employees of Prairie Spirit. To my knowledge, Prairie Spirit does not have a policy addressing the consumption of cannabis or opioids, prescribed or otherwise, on its property by board members, parents or other members of the general public. Prairie Spirit's submission did refer to an undated statement by the Saskatchewan School Board's Association (SSBA) concerning the legalization of cannabis. The SSBA believes there should be "no use on school board property and at events where children and youth will be attending." It is my understanding that Prairie Spirit has not formalized this policy.

[25] Prairie Spirit also referred to sections 2-14 and 2-16(a) of *The Cannabis Control (Saskatchewan) Act* which provides:

2-14 No individual who is older than a minor shall consume cannabis in a public place or any place other than a private place except as allowed pursuant to this Act, the regulations or an Act of the Parliament of Canada.

...

2-16(1) Notwithstanding any other provision of this Act, and unless authorized by the regulations or an Act of the Parliament of Canada, no individual who is older than a minor shall consume cannabis at any of the following locations:

(a) a school or independent school or on the grounds surrounding a school or an independent school;

[26] Prairie Spirit indicated that pursuant to section 80(1) of *The Education Act, 1995* indicates that meetings of Boards of Education shall be open to the public. It indicates that as such section 2-14 of *The Cannabis Control (Saskatchewan) Act* should apply to meetings of Prairie Spirit's Board. This is supported by subsection 1-2(1) of *The Cannabis Control (Saskatchewan) Act* which defines a "public place" as "a place or building to which the public has or is permitted to have access". Therefore, Prairie Spirit argued that *The Cannabis Control (Saskatchewan) Act* applies to meetings of Prairie Spirit's Board.

[27] I agree that meetings of Prairie Spirit's Board qualifies as a public place.

[28] However, section 1-4 of *The Cannabis Control (Saskatchewan) Act* provides:

1-4 Unless otherwise prescribed, this Act does not apply to the consumption, possession, distribution, purchase or sale of cannabis for medical purposes that occurs in accordance with the requirements of the applicable federal law.

[29] As such, I am not persuaded that subsection 2-16(1)(a) of *The Cannabis Control (Saskatchewan) Act* applies to the Complainant consuming prescription cannabis at a meeting of the Board. *The Cannabis Control (Saskatchewan) Regulations* also addresses cannabis for medical purposes as follows:

1-4 For the purposes of section 1-4 of the Act, no person shall:

(a) consume cannabis for medical purposes in a vehicle in contravention of subsection 2-10(1) of the Act; or

(b) sell or distribute cannabis to a minor for medical purposes in contravention of clause 3-14(b) of the Act.

[30] The Regulations do not restrict individuals from consuming cannabis for medical purposes in a public place.

[31] The federal *Cannabis Act* discusses restrictions on the possession, sale or distribution of cannabis in a public place. Further, section 266 of the federal *Cannabis Regulations* provides in part:

266 (1) The following individuals are authorized to possess, in a public place, cannabis — other than cannabis plants or cannabis plant seeds — that has been obtained under the Act, subject to the applicable maximum amounts and purposes set out in this section:

...

(b) an adult who is a registered person;

(c) an adult who, directly or indirectly, obtained the cannabis as an inpatient or outpatient of a hospital;



[32] Section 264(1) of the *Cannabis Regulations* provides the following definition for Part 14 of the regulations:

registered person means an individual who is registered with the Minister under subsection 313(1).

[33] Subsections 313(1) and (2) of the *Cannabis Regulations* provide in part:

313 (1) If the requirements set out in section 312 are met, the Minister must, subject to section 317, register the applicant and issue them a registration certificate.

(2) The registration certificate must contain the following information:

(a) the given name, surname and date of birth of the registered person and, if applicable, the designated person;

(b) the address specified in the application under paragraph 312(2)(b) and, if applicable, the address of the place where the designated person ordinarily resides;

...

(e) the name of the health care practitioner who provided the medical document that forms the basis for the registration;

(f) the daily quantity of dried cannabis, expressed in grams, that is specified in the medical document that forms the basis for the registration;

(g) the maximum quantity of dried cannabis, expressed in grams, that the registered person is authorized to possess by virtue of the registration, as determined in accordance with subsection 266(3) or 267(3), as the case may be;

(h) the effective date of the registration;

(i) the date of expiry of the registration, the date of which must correspond to the end of the period of validity of the medical document that forms the basis for the registration, as determined in accordance with subsection 273(4);

[34] It would have been appropriate for Prairie Spirit to ask the Complainant for information about whether he was registered with the Minister. This would have been consistent with the data minimization principle, which means that an organization should collect, use or disclose the least amount of identifying information necessary for the purpose.

[35] The policies or laws that have been cited by Prairie Spirit do not specifically prohibit the Complainant's use of prescription cannabis and opioids at Board meetings. I am not

persuaded that Prairie Spirit was authorized to collect the Complainant's personal information listed in the medical questionnaire for these purposes.

[36] Further, I am not persuaded that Prairie Spirit, in this situation, was reasonably required to collect the Complainant's personal information for an existing or proposed program or activity of the local authority. However, the personal information requested on the medical questionnaire was not collected. Therefore, a privacy breach did not occur.

[37] The Board is able to create policies for itself. Subsection 87(1)(bb) of *The Education Act, 1995* provides:

87(1) Subject to the powers of the conseil scolaire with respect to the division scolaire francophone and minority language instruction programs, a board of education may:

...

(bb) by resolution, provide for or authorize any actions, procedures or policies that are ancillary to or necessary for the carrying out of any duties or the exercise of any powers imposed or conferred on it by this Act.

[38] I recommend that Prairie Spirit consider whether it requires medical cannabis and other prescribed medication use and recreational substance use policies that applies to members of the Board and other individuals that frequent Prairie Spirit properties.

[39] I also recommend that Prairie Spirit specifically address the collection of personal information and data minimization principle in its *Medical Marijuana and Other Prescribed Medication Use* policy, its *Recreational Substance Use* policy and any related policies.

[40] Finally, as the Complainant has resigned from the Board, there is no need for the Board to keep this type of personal information. I recommend that Prairie Spirit assess whether the personal information provided by the Complainant on this subject should be returned to the Complainant or destroyed.

[41] On May 23, 2019, the Board reported that it considered the recommendations made in this report. It committed to following the recommendations regarding its policies. It will also assess whether it will return or destroy the Complainant's personal information with guidance from its legal counsel.

### **III FINDING**

[42] I find that a privacy breach did not occur.

### **IV RECOMMENDATIONS**

[43] I recommend that Prairie Spirit consider whether it requires medical cannabis and other prescribed medication use and recreational substance use policies that apply to members of the Board and other individuals that frequent Prairie Spirit properties.

[44] I recommend that Prairie Spirit specifically address the collection of personal information and the data minimization principle in its *Medical Marijuana and Other Prescribed Medication Use* policy, its *Recreational Substance Use* policy and any related policies.

[45] I recommend that Prairie Spirit assess whether the personal information provided by the Complainant on this subject should be returned to the Complainant or destroyed.

Dated at Regina, in the Province of Saskatchewan, this 23rd day of May, 2019.

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