



## INVESTIGATION REPORT 296-2017

### Northern Lights School Division No. 113

April 11, 2018

#### Summary:

The Complainant asked the Commissioner to investigate whether Northern Lights School Division No. 113 (Northern Lights) had the authority to disclose personal information to the Complainant's new employer. Northern Lights indicated it had authority to do so pursuant to subsection 28(2)(s) of *The Local Authority Freedom of Information and Protection of Privacy Act* and subsection 10(g)(ii) of *The Local Authority Freedom of Information and Protection of Privacy Regulations*. The Commissioner found Northern Lights had authority to disclose the personal information. He recommended that Northern Lights take no further action.

#### I BACKGROUND

- [1] On November 7, 2017, the Complainant brought a privacy concern to Northern Lights School Division No. 113 (Northern Lights). The Complainant alleged that Northern Lights disclosed a letter of termination to the Complainant's new employer without authority to do so.
- [2] On November 8, 2018, Northern Lights replied to the Complainant advising that the disclosure was authorized by subsection 28(2)(s) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and subsection 10(g)(ii) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (the Regulations).

- [3] The Complainant wrote back to the Director of Education of Northern Lights on November 8, 2017 with the concern that the person who had made the disclosure had responded to the privacy complaint. The Complainant requested that “a neutral person” conduct an investigation.
- [4] On November 14, 2017, the Complainant brought the concern to my office. On November 21, 2017, my office asked Northern Lights to provide a new response to the Complainant regarding the concern by someone other than the individual who disclosed the information. On December 12, 2017, Northern Lights provided a new response to the Complainant. It reiterated Northern Lights’ reliance on subsection 28(2)(s) of LA FOIP and subsection 10(g)(ii) of the Regulations as authority to disclose the information.
- [5] On December 15, 2017, our office confirmed that the Complainant was not satisfied with Northern Lights’ response. My office provided notification to both the Complainant and Northern Lights of my intention to undertake a review.

## **II DISCUSSION OF THE ISSUES**

### **1. Does LA FOIP apply in these circumstances?**

- [6] LA FOIP applies to privacy matters when three elements are present. The first element is a local authority, the second element is personal information and the third element is if the personal information is in the possession or control of the local authority.
- [7] Northern Lights division 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*;

[8] Subsection 23(1) of LA FOIP defines personal information. The portions relevant to this investigation 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:

...

(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;

...

[9] Northern Lights acknowledges that it disclosed the letter to the Complainant’s current employer. Northern Lights provided the entire letter to the Complainant’s employer with the exception of one paragraph, which was redacted. The letter contained a statement that the Complainant’s contract was terminated, the reasons for the termination, the fact expectations were discussed with the Complainant and that they were not met.

[10] The information disclosed to the new employer qualifies as employment history. Employment history is the type of information normally found in a personnel file such as performance reviews, evaluations, disciplinary actions taken, reasons for leaving a job or leave transactions. Information about an individual’s performance evaluations, a termination from a place of employment and the reasons for termination fall under the category of employment history. Employment history is personal information pursuant to subsection 23(1)(b) of LA FOIP.

[11] The Director of Education for Northern Lights authored the letter. The letter was in the possession and control of Northern Lights. LA FOIP is engaged.

**2. Did Northern Lights have the authority to disclose the Complainant’s personal information?**

[12] Northern Lights submits that it had the authority to disclose the Complainant’s personal information pursuant to subsection 28(2)(s) of LA FOIP and subsection 10(g)(ii) of the Regulations. Subsection 28(2)(s) 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:

...  
(s) as prescribed in the regulations.

[13] Subsection 10(g)(ii) of the Regulations provides:

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

...  
(g) to any person where the information pertains to:

...  
(ii) the terms or circumstances under which a person ceased to be an employee of a local authority, including the terms of any settlement or award resulting from the termination of employment;

[14] In its submission, Northern Lights indicated that it contracted with the Complainant's new employer to provide services to Northern Lights. The new employer asked the Complainant to provide those services to students in Northern Lights. Because of its previous experience with the Complainant, Northern Lights did not want this individual in its schools or working with its students. It asked that the Complainant not be assigned to Northern Lights students.

[15] Northern Lights submitted that the Complainant's new supervisor wanted to know why Northern Lights did not want the Complainant working in its schools. Northern Lights determined that the copy of the termination letter was a "succinct expression" of the reasons for the Complainant's termination and the reasons why Northern Lights did not want the Complainant to provide services to its students. Before the disclosure, Northern Lights reviewed LA FOIP and determined that subsection 10(g)(ii) of the Regulations authorized the disclosure. Northern Lights indicated that it redacted a paragraph from the letter that contained personal information of the employee because it believed it was not relevant to why Northern Lights did not want the Complainant working in its schools.

[16] My office has not had the opportunity to consider subsection 10(g)(ii) of the Regulations in detail in the past. Further, it is a unique provision compared to similar access to information and privacy legislation across the country.

- [17] In order to meet the criteria for disclosure, the personal information must either be:
- i) terms under which a person ceased to be an employee of a local authority; or
  - ii) circumstances under which a person ceased to be an employee of a local authority.
- [18] *Black's Law Dictionary*, Tenth Edition, provides the following definition for 'term': "A contractual stipulation". Order MO-1779 (2004) of the Ontario Information and Privacy Commissioner indicates that its "...orders have consistently held that information about the individuals named in the agreements, which include, inter alia, name, address, terms, date of termination and terms of settlement concern these individuals in their personal capacity and thus qualifies as personal information."
- [19] My office's view is that in the context of subsection 10(g)(ii) of the Regulations, "terms" means any contractual obligation of the local authority or the individual related to a termination of employment. This subsection also indicates that personal information can include the terms of any settlement or award resulting from the termination of employment.
- [20] "Circumstances under which a person ceased to be an employee of a local authority" means something different. The *Concise Oxford English Dictionary* defines "circumstance" as "a fact or condition connected with or relevant to an event or action". It is my view that the employment history information found in the letter are facts or conditions that led to Northern Lights' action of terminating the Complainant's employment. As such, I find that the personal information in question qualifies as circumstances under which the Complainant ceased to be an employee of Northern Lights.
- [21] It is also important to note that this is a discretionary clause. In other words, even if the personal information in question meets the criteria set out in subsection 10(g)(ii) of the Regulations, the local authority is not obligated to disclose it. The explanation that Northern Lights provided in its submission regarding its decision to disclose the personal information demonstrates that it exercised its discretion.

[22] Finally, when relying on subsection 10(g)(ii) of the Regulations to disclose personal information, a local authority should respect the data minimization principle. The data minimization principle means that a local authority should always collect, use and/or disclose the least amount of personal information necessary for the purpose. I note that Northern Lights redacted personal information from the letter that was disclosed to the new employer. This information also qualified as personal information pursuant to subsection 23(1)(b) of LA FOIP. By redacting this personal information from the letter before it disclosed it to the Complainant's new employer, Northern Lights respected the data minimization principle.

### **III FINDINGS**

[23] I find LA FOIP applies in these circumstances.

[24] I find that Northern Lights had authority to disclose the Complainant's personal information pursuant to subsection 10(g)(ii) of the Regulations.

### **IV RECOMMENDATION**

[25] I recommend that Northern Lights take no further action.

Dated at Regina, in the Province of Saskatchewan, this 11th day of April, 2018.

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