



INVESTIGATION REPORT 349-2017

Village of Hodgeville

August 16, 2018

Summary:

The Complainant submitted a breach of privacy complaint to the Village of Hodgeville (the Village) regarding the Village's practices for handling Code of Conduct complaints. The Village did not respond to the Complainant's privacy breach complaint. The Commissioner found that the Village did not appropriately respond to the Complainant's privacy breach complaint. The Commissioner recommended the Village amend its bylaw to discuss code of conduct complaints *in camera* and recommended the Village implement appropriate policies for the collection, use and disclosure of personal information when handling Code of Conduct complaints. The Commissioner also recommended that the Village implement mandatory annual access and privacy training for all employees and Councillors.

I BACKGROUND

- [1] On October 17, 2017, the Complainant submitted a breach of privacy complaint to the Village of Hodgeville (the Village) with concerns relating to the Village's practice for handling Code of Conduct complaints.
- [2] The Complainant did not receive a response from the Village to their alleged breach of privacy concerns.
- [3] In December, the Complainant submitted a November 24, 2017 letter requesting my office investigate their breach of privacy complaint.
- [4] On January 23, 2018, my office notified both the Village and the Complainant of my intention to undertake an investigation. In the notification emails, my office requested the

Village address why it had not responded to the Complainant whether or not the Village believed a breach of privacy had occurred.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to conduct an investigation?

[5] The Village is considered a local authority pursuant to subsection 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Thus, I have jurisdiction to conduct this investigation.

2. Did the Village respond appropriately to the Complainant's privacy concern?

[6] After receiving the Complainant's request, my office inquired if the Village had responded to the complaint, or if they intended to. The Village indicated that it had not responded to the Complainant as it did not believe the complaint related to a privacy breach and did not intend to respond.

[7] Part IV of LA FOIP outlines the obligations of a local authority to protect personal information. If an individual has concerns with a public body's collection, use, disclosure or safeguarding of their personal information, the individual can request the public body address their concerns. It is best practice for the public body to respond within 30 days, addressing the individual's privacy concern and advising the individual of their right to request my office investigate the matter if they are not satisfied with the response.

[8] When a public body receives an alleged breach of privacy complaint, the first action they should take is to investigate to determine if a privacy breach has occurred. If the public body's internal investigation concludes that the alleged breach of privacy complaint is unfounded, it should provide reasons to the individual as to how it arrived at this conclusion. Reasons might include: the information does not qualify as personal information under LA FOIP; they had authority under LA FOIP; or they had consent from the individual to disclose. If a public body finds that a breach of privacy has occurred, it

should explain what happened, the findings of their investigation and outline steps taken to prevent future occurrences.

- [9] It is best practice for a public body to respond to an individual's privacy breach complaint, regardless of whether the public body is of the opinion it is valid or not. As such, the Village did not respond appropriately to the Complainant's privacy breach complaint.

3. Did a privacy breach occur?

- [10] The Complainant's privacy breach complaint provided the following concerns:

At our regular meeting on July 18, 2017, a local business man was granted a time to address the Village Council... he did not speak about what he declared on his Delegation form but went on to make accusations about myself...

...

At the August regular meeting you, CAO [name of Administrator], had on the agenda Councillor Reprimands. On your Administrator's report under New Business was included the motion for Councillor Reprimands.

"Be is resolved that Councillor [name of Complainant] be reprimanded for contravening the Code of Ethics Bylaw Section 3(c) for disrespect and using derogatory language towards [name of individual]."

This is regarding myself indicating the alleged offence and the motion for discipline action! All of this in public documents before the process of the Code of Ethics bylaw procedure was even started not much less substantiated or decided upon!!

...

Insult to injury was that you as Mayor and Chairman went on to "process" the claims that evening in public... disrespectful of my privacy, character and the Village of Hodgeville Code of Ethics bylaw procedure requiring in camera discussion, validation and conclusions.

- [11] The Complainant's privacy concerns relates to the Village's practice of discussing Code of Conduct complaints at public council meetings, rather than discussing *in camera*. Concerns of the Village's practice of handling Code of Conduct complaint is also discussed in Investigation Report 350-2017.

[12] In order for a privacy breach to occur under LA FOIP, the local authority's collection, use or disclosure of information must involve an individual's personal information.

[13] Subsection 23(1) of LA FOIP provides a list of examples of information that would qualify as personal information, however the list is not exhaustive. There can be other types of information that would qualify as personal information that are not listed. Part of that consideration involves assessing if the information has both of the following:

1. Is there an identifiable individual?

Identifiable individual means that it must be reasonable to expect that an individual may be identified if the information were disclosed. The information must reasonably be capable of identifying particular individuals because it either directly identifies a person or enables an accurate inference to be made to their identity when combined with other available sources of information (data linking) or due to the context of the information in the record.

2. Is the information personal in nature?

Personal in nature means that the information reveals something personal about the individual. Information that relates to an individual in a professional, official or business capacity could only qualify if the information revealed something personal about the individual for example, information that fits the definition of employment history.

[14] As the Complainant was named, there is an identifiable individual. A Code of Conduct complaint was submitted to the Village regarding the Councillors actions when responding to an inquiry about services provided by the Village. Based on the Code of Conduct Complaint and discussions in the public meeting, the Village recorded reprimand actions against the Councillor because of the complaint that was submitted. While the Complainant was acting in their role as a Councillor, how well they perform in that role and any reprimand actions taken against them based on their performance is personal in nature. As such, this information would qualify as personal information.

[15] In this case, the Village received a complaint pursuant to the Village's Code of Conduct bylaw from a member of the public that contained personal information of the

Complainant. The Complainant's breach of privacy complaint involves how the Village handled that complaint and that the Code of Conduct bylaw was not followed.

- [16] The Village's submission did not address authority for the actions taken with the Complainant's personal information and instead took the position that there was nothing in legislation that provided the Village could not discuss Code of Conduct complaints at a public meeting.
- [17] At the time the Code of Conduct complaint was submitted, the Village's Code of Ethics Bylaw provided that "all discussions surrounding alleged and substantiated contraventions of this policy shall be conducted in an *in camera* session at a council meeting."
- [18] While the Village has advised my office that it has since amended the bylaw to provide that these complaints may be dealt with *in camera*, at the time this alleged breach of privacy occurred, the bylaw did not contain language that made it a discretionary decision.
- [19] When a council passes a bylaw, best practice would be to follow that bylaw. Ratepayers would have an expectation that council complies with the bylaws they have passed.
- [20] The Government of Saskatchewan website includes a number of resources for municipalities. One of the resources available is the *Sample Template for Council Code of Ethics Bylaw*. At Part II of the template bylaw, Contravention of the Code of Ethics, it outlines a process to address contraventions and includes a disclaimer. This Part of the sample bylaw provides:

PART II CONTRAVENTION OF THE CODE OF ETHICS

(The Act requires a process to address contraventions to the code of ethics be in place but does not prescribe a set or uniform process. Below is a potential procedure for handling allegations of contravening the code of ethics. A municipality is free to decide the process under which allegations are to be received, handled, and addressed. Work with your legal counsel to ensure your procedure addresses the specific needs and capabilities of your municipality.)

Complaint Procedure

3. As required by clause (66.1(5)(c) of The Cities Act/93.1(5)(c) of The Municipalities Act/ 107.1(5)(c) of The Northern Municipalities Act, 2010), the following section details the procedure for handling contraventions of the code of ethics.

(a) To report an alleged contravention of the code of ethics, an individual/organization/member of council may submit the form found in Schedule A, by sending the form directly to (insert applicable position for receiving the complaints – i.e. municipal administrator, city clerk), by mail, e-mail, fax or courier. The complaint will then be presented to council at the next regular meeting of council in an *in camera* session.

(b) Upon receipt of a complaint, Council shall discuss the complaint and take all necessary steps to ensure the complaint is valid.

(c) All discussions surrounding alleged and substantiated contraventions of this policy **shall be conducted in an *in camera* session** at a meeting of council.

...

[emphasis added]

[21] Based on the advice being provided by the Ministry of Government Relations in this template, these matters should be discussed between council in an *in camera* session.

[22] Subsection 120(1) of *The Municipalities Act* provides:

120(1) Subject to subsections (2) and (3), councils and council committees are required to conduct their meetings in public.

(2) Council 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*; or

(b) concerns long-range or strategic planning.

[23] As subsection 120(2) of *The Municipalities Act* provides that council may conduct portions of a meeting that are exempt under Part III of LA FOIP. Subsection 15(1)(b) of LA FOIP is one of the exemptions included in Part III of LA FOIP and 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:

(i) an Act authorizes holding the meetings in the absence of the public; or

(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.

[24] Subsection 15(1)(b)(ii) of LA FOIP points to Part IV of LA FOIP. This Part of the legislation deals with the protection of privacy. Taking into consideration subsection 15(1)(b)(ii) of LA FOIP along with subsection 120(2) of *The Municipalities Act*, this clause provides that a public meeting could be closed for the purposes of protecting personal information, as provided in Part IV of LA FOIP.

[25] Subsection 28(1) of LA FOIP is found in Part IV and provides:

28(1) No local authority shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 29.

[26] While *The Municipalities Act* provides the head of the Village with the ability to exercise their discretion about whether or not to close a meeting, it would be best practice for the Village to discuss Code of Conduct complaints in a closed meeting. If the head deems it necessary to either discuss the matter in a public meeting or include information regarding the matter in public documents, it would be best practice for the Village to first consider if there was authority for the disclosure in LA FOIP. If there was authority for the disclosure of personal information, the Village should also consider the need-to-know and data minimization principles to ensure that the least amount of personal information required is being disclosed and only to those with a need for the information.

[27] I recommend that the Village amend its bylaw to provide that Code of Conduct complaints will be dealt with in a closed meeting.

[28] I recommend that the Village develop and implement a policy for the collection, use and disclosure of personal information for the purposes of managing Code of Conduct complaints. The policy should ensure that the Village has appropriate authority for the collection, use and disclosure of the personal information involved and takes into consideration the need-to-know and data minimization principles.

[29] I recommend the Village implement mandatory annual access and privacy training for all Village employees and councillors

III FINDINGS

[30] I find the Village did not respond to the Complainant's privacy breach complaint and it should have.

[31] I find that the information at issue qualifies as personal information of the Complainant pursuant to subsection 23(1) of LA FOIP.

[32] I find that the Village did not adhere to the practice detailed in their bylaw to discuss Code of Conduct complaints in a closed meeting.

IV RECOMMENDATIONS

[33] I recommend that the Village amend its bylaw to provide that Code of Conduct complaints will be dealt with in a closed meeting.

[34] I recommend that the Village develop and implement a policy for the collection, use and disclosure of personal information for the purposes of managing Code of Conduct complaints. The policy should ensure that the Village has appropriate authority for the collection, use and disclosure of the personal information involved and takes into consideration the need-to-know and data minimization principles, before taking action.

[35] I recommend the Village implement mandatory annual access and privacy training for all Village employees and councillors.

Dated at Regina, in the Province of Saskatchewan, this 16th day of August, 2018.

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