

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

INVESTIGATION REPORT LA-2014-001

Rural Municipality of Parkdale No. 498

Summary:

The Complainant sent a letter to the Reeve and council members of the Rural Municipality of Parkdale No. 498 (RM) where she sought leave from her position as the Administrator of the RM. A third party referenced and quoted the Complainant's letter. The Complainant became concerned as to how the third party had a copy of her letter. The Commissioner found that a council member had disclosed the Complainant's letter to a third party and that such disclosure was not authorized by *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). He found that the RM has taken appropriate steps in addressing the issues in this case, including issuing an apology letter to the Complainant, adopting a policy on how to prevent privacy breaches, and providing training to the RM's council members and employees.

I BACKGROUND

- [1] In a letter dated January 2, 2013, the Complainant wrote to the Reeve and council members of the Rural Municipality of Parkdale No. 498 (RM) where she sought leave from her position as the Administrator of the RM and noted the reasons for the leave.
- [2] A third party wrote a letter to the Complainant's lawyer quoting from the Complainant's January 2, 2013 letter. The January 2, 2013 letter, however, had not been addressed to this particular third party.
- [3] The Complainant wrote a letter dated May 5, 2013 to the RM asking how the third party became aware of her January 2, 2013 letter.

- [4] The Reeve responded in a letter dated June 11, 2013. He said that at a council meeting in May 2013, he asked all the council members if they had given the Complainant's letter to anyone. All but one council member advised they did not.
- [5] The Complainant forwarded the Reeve's response to my office and advised my office that she was concerned that her January 2, 2014 letter was shared with the third party.
- [6] In letters dated July 17, 2013, my office notified the Complainant and the RM that we would be undertaking an investigation.

II DISCUSSION OF ISSUES

- [7] The RM is a local authority pursuant to subsection 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

1. Is the Complainant's letter, which is addressed to "Reeve and Council", subject to LA FOIP?

- [8] LA FOIP applies to records in the possession or control of a local authority. However, the Complainant addressed her January 2, 2013 letter to the Reeve and the council members. Normally, LA FOIP would not apply to records of elected officials. Therefore, I need to determine if the record is in the possession or control of the RM, or if the letter is a record of elected officials.
- [9] The Office of the Information and Privacy Commissioner of Ontario (Ontario IPC) determined in Order M-813 that there are two circumstances in which records of a city councillor would be subject to the province's access and privacy law. First, if the councillor was acting in the position of an "officer" of the City, or if the records were found to be in the custody or control of the City. However, if the councillor was acting on behalf of a constituent, then the record would not be subject to the access and privacy law.

[10] I will use the same approach as the Ontario IPC to determine if the letter is subject to LA FOIP. The letter is appropriately addressed to “Reeve and Council” because *The Municipalities Act* dictates that it must be council that appoint, suspend, or dismiss an administrator. Subsection 110(1) of *The Municipalities Act* states that every council is to establish a position of administrator of the municipality. Further, subsection 127(q) of *The Municipalities Act* also states that it is council, and no other, must deal with matters pertaining to the appointment, suspension or dismissal of an Administrator.

[11] The RM’s former Administrator was not writing to the Reeve or Council for constituency matters. The record was for the purposes of seeking leave. Certainly, the RM would have a right to the record as it relates to its human resource function to manage personnel. In order for the RM to grant the leave, as well as fill the position of Administrator, it must have documentation from the former Administrator that she was seeking leave.

[12] So while the letter is addressed to the council, the letter is related to the function of the RM. The RM is to act through its council pursuant to subsection 5(1) of *The Municipalities Act*.

[13] As such, even though the record is addressed to the “Reeve and Council”, it is a letter that relates to the human resources function of the RM. Therefore, I find that the letter is in the possession or control of the RM and subject to LA FOIP.

2. Did the letter contain personal information as defined by section 23 of LA FOIP?

[14] Subsection 23(1)(b) of LA FOIP defines “personal information” to include an individual’s employment history. In the past, my office has found that employment history would include reasons for leaving a job (Investigation Report F-2012-002). As such, I find that the January 2, 2013 letter contains the Complainant’s personal information.

3. Did the RM properly disclose the Complainant's personal information?

[15] The RM should only be disclosing personal information in accordance with subsection 28(1) of LA FOIP.

[16] As mentioned in the background section, the Reeve replied in a letter dated June 11, 2013 to the Complainant explaining that all but one council member said they did not disclose the January 2, 2013 letter to anyone. The Reeve also wrote to my office in an undated letter, which we received on September 5, 2013, that all council members said they did not provide a copy of the Complainant's letter, except for one specific council member. Both these letters implied that one specific council member had disclosed the Complainant's letter to the third party.

[17] Further, in a letter dated January 19, 2014 to my office, the Reeve named the council member whom he believed disclosed the January 2, 2013 letter to the third party and that such a disclosure was not authorized by LA FOIP. Therefore, as there is no authority evident, I find that the RM had improperly disclosed the Complainant's personal information.

[18] In a letter dated April 14, 2014 to the RM, my office recommended that the RM issue an apology letter to the Complainant. The RM advised my office in a letter dated May 28, 2014 that it issued an apology letter to the Complainant, and it provided my office with a copy of the letter.

4. Does the RM have proper safeguards to prevent a similar privacy breach from occurring again?

a. Policies and procedures

[19] My office has established in previous reports that public bodies must have adequate safeguards in place to protect personal information in their possession or control. These

safeguards would include policies and procedures regarding the management of personal information.

[20] In the Reeve's undated letter, which was received by my office on September 5, 2013, the Reeve advised that the Administrator at the time had introduced information on developing a policy based on LA FOIP. Opposition to such a policy came from the council member who had disclosed the Complainant's January 2, 2013 letter to the third party. Again, in the December 2012 council meeting, the council member expressed opposition to such a policy.

[21] I find that the RM had no policy or procedure in place. Therefore, my office recommended to the RM it develop written policies and procedures for its employees as to how they are to manage personal information in accordance with LA FOIP. In response, the RM advised us in an email dated July 15, 2014 that it had adopted a policy to guide council members, employees and appointed representative and hamlet board members of the municipality in how to prevent privacy breaches.

[22] Therefore, even though I found that the RM did not have adequate policies or procedures, it has taken an appropriate step by adopting a policy on how to prevent privacy breaches.

b. Training

[23] In the past, my office had said that the actual practice of a public body must reflect what was written in its policies and procedures. The RM had informed my office in its letter dated January 19, 2014 that it received training from the Ministry of Justice's Access and Privacy branch. In response, my office recommended to the RM that it commit to developing training materials to guide its employees on how to manage personal information in accordance with LA FOIP. In a telephone call with my office, the RM asked if my office could send it links to resources to assist the RM in developing resources for its council members and employees. My office sent the RM an email dated July 8, 2014 which including a link to online training modules and other resources developed by the Ministry of Justice's Access and Privacy branch. The RM responded in

an email dated July 15, 2014, advising my office that it would be developing a handout for all council members, employees and board members and that it will utilize online tools for training. It also stated that it would attend workshops available in the RM's area.

[24] I find that the RM has taken the appropriate steps to provide LA FOIP training to its council members and employees. I am also pleased that they are committed to developing resources for its council members and employees.

III FINDINGS

[25] I find that the Complainant's letter dated January 2, 2013 is in the possession or control of the RM.

[26] I find that the Complainant's letter dated January 2, 2013 contained the Complainant's personal information.

[27] I find that the RM did not disclose the Complainant's letter to the third party in accordance with LA FOIP.

[28] I find that the RM has taken the appropriate steps of adopting a policy on how to prevent privacy breaches.

[29] I find that the RM has taken the appropriate steps of providing training to council members and employees as well being committed to developing resources for its council members and employees on how to manage personal information in accordance with LA FOIP.

IV RECOMMENDATIONS

[30] I recommend that the RM remains committed to ensuring its council members and employees are compliant with LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 10th day of September 2014.

RONALD J. KRUZENISKI, Q.C.
Saskatchewan Information and Privacy
Commissioner