



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 035-2017

Town of Nipawin

March 20, 2017

Summary: The Town of Nipawin withheld records related to the engine failure of a truck it owned and operated pursuant to subsection 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) on the basis that the records qualified as personal information as defined by subsection 23(1) of LA FOIP. The Commissioner found that only portions of the record qualified as personal information and recommended release of the rest of the record.

I BACKGROUND

- [1] On January 13, 2017, the Town of Nipawin (the Town) received an access to information request for a report “regarding circumstances surrounding catastrophic engine failure of 2009 RAM 1500”.
- [2] In a letter dated February 17, 2017 to the Applicant, the Town indicated that it was denying access to the record because it qualified as personal information pursuant to section 23 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). It also indicated that it did not have the consent of the individual to whom the personal information relates to release it to the Applicant.
- [3] The Applicant was dissatisfied with the decision of the Town and requested a review by my office on February 21, 2017. My office confirmed with the Town that it refused to grant access to the personal information pursuant to subsection 28(1) of LA FOIP.

- [4] On February 24, 2017, my office provided notification to both the Town and the Applicant of my intention to undertake a review.

II RECORDS AT ISSUE

- [5] The Town identified three types of records responsive to the Applicant's request. The first is a 16 page failure analysis report prepared for the Town by an external Investigator. The second is a two page "exhibit" that the Investigator attached to the report. The third is a two page e-mail written by the Investigator to the Town's Chief Administrative Officer answering additional questions that resulted from the report.
- [6] The Town has withheld the record in its entirety pursuant to subsection 28(1) of LA FOIP.

III DISCUSSION OF THE ISSUES

- [7] The Town qualifies as a local authority pursuant to subsection 2(f)(i) of LA FOIP.

1. Did the Town properly apply subsection 28(1) of LA FOIP to the record?

- [8] Subsection 28(1) of LA FOIP 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.

- [9] In order for subsection 28(1) of LA FOIP to apply, the information in the record must first be found to qualify as personal information pursuant to subsection 23(1) of LA FOIP. Some of the relevant subsections provide:

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;

...

(h) the views or opinions of another individual with respect to the individual;

- [10] The Town has applied subsection 28(1) of LA FOIP to all three documents in their entirety. In an e-mail to my office, the Town indicated that the records qualify as the employment history of the employee who was operating the truck when the engine failed (the employee). The Town did not provide a formal submission and noted it would consider the recommendations made in this Investigation Report.

Failure Analysis Report

- [11] It is my understanding that the failure analysis report was prepared by the Investigator at the request of the Town. The report examines the events that lead to the engine failure of a truck that was owned and operated by the Town. In the course of creating the report, the Investigator interviewed individuals involved in the maintenance and operation of the truck and examined the engine. His discussions and observations are documented in the report. The report also includes the Investigator's conclusion as to the cause of the engine failure.
- [12] As noted, the Town believes the entire report qualifies as the employment history of the employee. Employment history is considered personal information pursuant to subsection 23(1)(b) of LA FOIP. I have defined employment history as 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. It does not include work product.
- [13] Work product is information generated by or otherwise associated with an individual in the normal course of performing his or her professional or employment responsibilities, whether in a public or private setting. This is not considered personal information.

- [14] The employee was operating the truck as a result of performing his professional responsibilities. Therefore, in general, the information contained in this record was information generated as a result of performing his professional responsibilities.
- [15] Other parts of the record, which are descriptions and observations about the truck, also do not qualify as employment history or the personal information of any individual.
- [16] There are, however, specific parts of the record that do qualify as personal information of the employee.
- [17] Pursuant to subsection 23(1)(h) of LA FOIP, the views or opinions of another individual with respect to the employee would qualify as personal information of the employee. I find that the following passages of the report qualify as opinions about the employee in question:
- the last sentence of the last paragraph on page 2;
 - the middle part of the fourth sentence of the second paragraph on page 4;
 - the last sentence of the second paragraph on page 4; and
 - the third sentence of the second paragraph on page 16.
- [18] Subsection 23(1) of LA FOIP is a non-exhaustive list of personal information. There can be other types of information that would qualify as personal information that are not listed. On the day that the truck's engine failed, the employee did some personal errands while on a business trip. This is described briefly in the report as well as the employee's personal relationship with one of the individuals who was interviewed. This information would qualify as personal information of the employee pursuant to subsection 23(1) of LA FOIP.
- [19] I find that the following passages qualify as personal information pursuant to subsection 23(1) of LA FOIP:
- Four words in the last paragraph on page 4 that describes why the employee was in a certain town;

- Four words in the third paragraph on page 5 that describes why the employee was in a certain town;
- Four words in the fifth paragraph on page 5 describing an individual's relationship to the employee; and
- Five words in the first heading on Page 6.

The Exhibit

[20] The Exhibit is a two page print out from the Internet that generally describes a certain aspect of the type of truck that is in question. The Investigator attached this research to the failure analysis report to support his conclusions. It does not qualify as personal information.

The E-mail

[21] The e-mail was written by the Investigator. He was responding to follow up questions posed by the Town after the failure analysis report was submitted. While the failure analysis report focuses on what occurred to the truck, the e-mail delves into the performance of the employee. Passages of the e-mail that reveal the questions of the town with respect to the employee's performance, and the answers to the questions, would qualify as employment history of the employee and personal information pursuant to subsection 23(1)(b) of LA FOIP.

[22] The following passages of the e-mail qualifies as personal information:

- The second sentence of the fourth paragraph on the first page;
- The first paragraph on the second page;
- Bullets a, b and c on the second page; and
- The second paragraph on the second page.

- [23] The Town should withhold personal information pursuant to subsection 28(1) of LA FOIP. Pursuant to section 8 of LA FOIP, the Town should sever the personal information from the record and release the rest to the Applicant.

IV FINDING

- [24] I find that portions of the record qualify as personal information pursuant to subsection 23(1) of LA FOIP.

V RECOMMENDATION

- [25] I recommend that the Town sever personal information, as listed in paragraphs 17, 19 and 22, from the record and release the remaining portions of the record to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 20th day of March, 2017.

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