



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 082-2017**

### **Rural Municipality of McKillop No. 220**

**August 24, 2017**

#### **Summary:**

The Rural Municipality of McKillop (the RM) received an access to information request for invoices sent to the RM by a former Employee. It withheld portions of the record because it believed it qualified as personal information pursuant to subsection 23(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found that portions did not qualify as personal information and recommended its release. He also recommended that the RM consider releasing details of the deductions related to the former Employee's insurance or pension pursuant to subsection 28(2)(n)(i) of LA FOIP. Finally, the Commissioner recommended that the RM release hours worked by other employees.

#### **I BACKGROUND**

- [1] The Applicant made an access to information request to the Rural Municipality of McKillop (the RM) for “Invoices submitted to the R.M. for contract services by [a former Employee] covering the period from July 1<sup>st</sup> 2016 to December 31<sup>st</sup>, 2016.” He also requested “Invoices submitted by summer students... for work performed for the R.M. of McKillop #220”.
- [2] The RM responded on April 13, 2017 indicating that access to the records responsive to the first part of the request were being denied on the basis that it contained personal information and was withheld pursuant to subsection 28 of *The Local Authority Freedom*

*of Information and Protection of Privacy Act (LA FOIP).* It also indicated that records responsive to the second part of the request did not exist.

- [3] On April 24, 2017, the Applicant requested a review by my office of the RM's response to the first part of the request. Through early resolution efforts by my office, the RM agreed to release the records, severing portions it believed to qualify as personal information. The Applicant received 11 pages of redacted records on May 12, 2017 and was unsatisfied with the request. He requested that my office review the decision of the RM to withhold the redacted portions.
- [4] On May 16, 2017, my office provided notification to both the Applicant and the RM of my intention to undertake a review.
- [5] The RM indicated that it would not make a submission. It indicated that it wanted guidance to balance the access rights of the Applicant and privacy rights of the former Employee and would likely comply with my recommendations.
- [6] In addition, a new Administrator took over in June 2017. When she provided the responsive records to my office for review, she included records related to the Applicant's second request. They were not invoices, but an account of the hours that the students had worked. My office advised the Applicant. He indicated he was interested in these records. On July 26, 2017, my office notified the RM that these records would also be a part of this review.

## **II RECORDS AT ISSUE**

### ***11 Invoices of the Former Employee***

- [7] There are 12 pages of records responsive to the first request. The first 11 pages are invoices submitted by the former Employee. She was a contracted employee of the RM. Each invoice indicates the former Employee's fee for a specific time period and some indicate how many extra hours were worked. The RM severed the following information from the records:

- the former Employees personal address, phone number, fax number and e-mail;
- various deductions from the invoices for the purpose of insurance premiums and pension plan contributions paid through the RM;
- deduction for educational opportunity;
- additions for office supplies;
- additions for travel;
- subtotal of the invoice;
- GST amount; and
- balance due.

[8] The RM also severed the GST and PST registration numbers of the former Employee. The Applicant has indicated he is not interested in this information. As such, I will not include them in this review. The RM can continue to withhold these numbers.

[9] Also, the former Employee agreed that the deduction on the December 30, 2017 invoice for a workshop registration fee could be disclosed. She noted that she reimbursed the RM even though it was passed by council resolution 403/2016 that the RM would pay the registration fee. The RM should release this information to the Applicant.

#### ***Receipt for Telephone Splitter***

[10] Page 12 is a receipt from a store for a telephone splitter. The RM indicated that it reimbursed the former Employee for the amount of the receipt out of petty cash. The RM has withheld the receipt in its entirety.

#### ***Calendar Pages***

[11] The last four pages are responsive to the second part of the Applicant's request. They are photocopies of a calendar. Two pages relate to one student and the other two pages relate to a second student. Handwritten notes indicate the hours that the students worked for the RM.

### III DISCUSSION OF THE ISSUES

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

#### 1. Did the RM appropriately apply subsection 28(1) of LA FOIP to the record?

[13] 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.

[14] 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 relevant subsections include:

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;

...

(e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;

...

(j) information that describes an individual’s finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

[15] I also note that subsection 23(2) of LA FOIP provides:

23(2) “**Personal information**” does not include information that discloses:

...

(e) details of a discretionary benefit of a financial nature granted to an individual by a local authority;

(f) expenses incurred by an individual travelling at the expense of a local authority;

...

### *11 Invoices of the Former Employee*

[16] The RM reported that the former Employee was an independent contractor and had contracts with other rural municipalities. There is a contract between the RM and the former Employee. She would submit invoices to the RM at regular intervals for compensation for her work. The RM has provided the Applicant access to parts of these invoices.

[17] By providing access to portions of the 11 invoices, the RM has released general information about the compensation it paid to the former Employee. In past reports, my office has said that, in general when not dealing with a public body, an individual’s name and salary information could qualify as personal information pursuant to subsections 23(1)(b) or (j) of LA FOIP. However, subsection 23(2)(e) of LA FOIP states that details of a discretionary benefit of a financial nature granted to an individual by a local authority is not personal information.

[18] In Review Report LA-2009-001, my office adopted a definition of benefit as a favorable or helpful factor or circumstance, an advantage, compensation, an indemnity paid in money or financial assistance or services. I have indicated that discretionary means that a decision-maker has a choice as to whether, or how, to exercise a power. It was the RM’s discretion to agree to the compensation terms described in the contract. The compensation paid to the former Employee by the RM is not personal information pursuant to subsection 23(2)(e) of LA FOIP.

[19] However, the RM has withheld some information from the invoices.

*Contact Information*

- [20] With respect to the contact information, the RM withheld the former Employee's post office box number, town, province and postal code, phone number, fax number and e-mail address. I have said in past Reports, such as Review Report 207-2016 to 211-2016, that contact information of those individuals acting in their capacity as professionals would be considered business card information.
- [21] Business card information is the type of information found on a business card such as name, job title, work address, work telephone numbers, etc. This type of information is generally not considered personal in nature and therefore would not be considered personal information.
- [22] The RM should disclose this information to the Applicant.

*Insurance and Pension Information*

- [23] Next, the RM withheld details on the invoices that relate to deductions taken from the former Employee's invoice for her insurance and pension. The RM provided my office with a copy of its contract with the former Employee. The contract indicates that the former Employee was responsible for payment of insurance premiums and fifty percent of a contribution to her pension. I note that the Applicant already has access to the contract.
- [24] The information regarding these types of deductions qualify as personal information of the former Employee pursuant to subsection 23(1)(b) of LA FOIP because they are information relating to financial transactions in which the former Employee has been involved.
- [25] However, these financial transactions occurred through the RM. In other words, somewhere in the RM's office should be records that demonstrate that it paid these expenses. Further, as noted above, the former Employee's contract indicates that the RM was not responsible for those costs. Therefore, I must consider whether the release of the

personal information is in the public interest pursuant to subsection 28(2)(n)(i) of LA FOIP. The subsection 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:

...

(n) for any purpose where, in the opinion of the head:

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure;

[26] In order for this subsection to be utilized, a three part test must be met:

1. Is the information 'personal information'?
2. Is there a public interest in the information?
3. Does the public interest outweigh any invasion of privacy?

[27] Pursuant to subsection 41(1)(a) of LA FOIP, my office gave notice to the former Employee of our intention to review the applicability of subsection 28(2)(n)(i) of LA FOIP. She provided a submission to my office.

[28] I have already determined that the information in question qualifies as personal information.

[29] In order to determine whether there is a public interest in the information, there must be a relationship between the record and the Act's central purpose of shedding light on the operations of the local authority. For example, would the information in the record serve the purpose of informing or enlightening the citizenry about the activities of the local authority? Would it add in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices?

[30] A public interest does not exist where the interests being advanced are essentially private in nature. However, where a private interest in disclosure raises issues of a more general application, a public interest may be found to exist.

[31] I note that subsection 117(a) of *The Municipalities Act* provides:

**117(1)** Any person is entitled at any time during regular business hours to inspect and obtain copies of:

(a) any contract approved by the council, any bylaw or resolution and any account paid by the council relating to the municipality;

[32] Any one is entitled to have access to the records that demonstrate that the RM paid the former Employee's pension contribution and insurance premiums. Subsection 117(a) of *The Municipalities Act* also allows an individual to inspect and obtain copies of the contract that indicates that the former Employee is responsible for the majority of these payments. There is no other document that I am aware of that demonstrates that the former Employee did reimburse the RM for these payments.

[33] The release of the information in question would allow the RM to demonstrate that it has been reimbursed, through the former Employee's invoices, for these expenses. This would demonstrate that it has not made any improper expenditures.

[34] Further, the former Employee provided my office with a copy of a letter to the editor written by the Applicant and published by a local newspaper that questioned the arrangement that the RM had with the former Employee. The newspaper's decision to publish this letter is also a sign that there is public interest in this material.

[35] The RM must also weigh the public interest against the personal privacy interests of the individuals whose personal information appears in the record. Some things to consider regarding any invasion of privacy:

- Consider the representations made by the affected individuals arguing against disclosure.
- Should the affected individuals' privacy rights be given preference over the public interest that exists in disclosing the record?



- [36] In her submission, the former Employee indicated that the Applicant's letter to the editor was defamatory and commented on her professional capacities. She raised concerns that release of the personal information in question could cause the Applicant to continue this behaviour. She provided a copy of the article to my office.
- [37] The Applicant's letter to the editor questions the RM's choice to hire a part time employee at a higher rate than a typical full time permanent employee. The Applicant also comments that communication "moves very slowly" through the office in this context. I view the statement as criticism of the decisions of the RM to employ a part time person in this role.
- [38] I recommend that the RM consider whether disclosure of this personal information is in the public interest and outweighs any invasion of privacy that could result from the disclosure and consider disclosing the personal information pursuant to subsection 28(2)(n)(i) of LA FOIP.

*Reimbursement for office supplies*

- [39] In one case, the RM severed an item from one of the invoices that is a reimbursement for office supplies for the RM, purchased by the former Employee. This is not personal in nature and does not qualify as personal information. The RM should release this charge.

*Travel reimbursement*

- [40] One of the invoices included a charge for travel done by the former Employee on behalf of the RM. Subsection 23(2)(f) of LA FOIP provides that expenses incurred by an individual travelling at the expense of a local authority does not qualify as personal information. The RM should release this charge.

*GST amounts and totals*

- [41] Finally, the RM has severed the subtotal, GST amount and balance due on each of the 11 invoices. As mentioned above, the RM has already released details on the invoices that demonstrate how the former Employee's compensation is calculated and the "base"

amount of compensation owed before the deductions described above. As noted, details of those deductions qualify as personal information. Although the subtotal, GST amount and balance due, may reflect how much has been deducted from the “base” amount, it does not reveal the details of the deductions themselves. The subtotal, GST amount and balance due reflect details of a discretionary benefit of a financial nature granted to the former Employee by the RM and do not qualify as personal information pursuant to subsection 23(2)(e) of LA FOIP.

***Receipt for Telephone Splitter***

[42] The RM identified a receipt from a store for a telephone splitter purchased for the RM as responsive to the first part of the Applicant’s request. It withheld the entire document in full. The RM advised that it reimbursed the amount of the receipt to the former Employee out of petty cash.

[43] The receipt does not contain any information about the former Employee and does not even contain her name. The item was paid for in cash. I find that none of the information on the receipt qualifies as personal information. The RM should release this receipt to the Applicant.

***Calendar Pages***

[44] The last four pages are calendar pages that depict the hours worked by two students in certain months. They are responsive to the second part of the Applicant’s request. They were withheld in full.

[45] In Review Report LA-2012-002, my office cited the Supreme Court of Canada decision *Dagg v. Canada* (Minister of Finance), [1997] 2 SCR 403 which concluded that hours of work pertain more to the job description of an individual than personal information. As such, I find the information on these calendar sheets do not qualify as personal information.

[46] The record also indicates when one of the students used a personal vehicle while working for the RM and the distance that was travelled. Again, this does not qualify as personal information pursuant to subsection 23(2)(f) of LA FOIP.

[47] The RM should release these four pages in their entirety to the Applicant.

#### **IV FINDING**

[48] I find that information about the deductions related to the former Employee's insurance or pension qualifies as personal information pursuant to subsection 23(1)(b) of LA FOIP.

#### **V RECOMMENDATIONS**

[49] I recommend that the RM release the record to the Applicant with the exception of the GST and PST registration numbers on all invoices and details of the deductions related to the former Employee's insurance or pension found on the invoices dated:

- July 27, 2016
- August 29, 2016
- September 30, 2016
- October 28, 2016
- November 25, 2016
- December 30, 2016

[50] I recommend that the RM reconsider releasing the details of the deductions related to the former Employee's insurance or pension pursuant to subsection 28(2)(n)(i) of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 24th day of August, 2017.

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