

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2022-23

April 27, 2022

VILLAGE OF LONGVIEW

Case File Number 008529

Office URL: www.oipc.ab.ca

Summary: The Complainant alleged that the Village of Longview (the Public Body) disclosed her personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the Act) when it forwarded an e-mail (the E-mail) from the Complainant to a third party Engineering Firm (the Engineering Firm).

The Adjudicator found that the E-mail contained the Complainant's personal information and that the Public Body contravened the Act when it provided the E-mail to the Engineering Firm. The Adjudicator ordered the Public Body to cease disclosing the Complainant's personal information in contravention of the Act.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(e); 1(n)(i), 1(n)(iii), 1(n)(ix); 29(1)(b); 40(1), 40(1)(c); 40(1)(d)40(1)(h), 40(1)(i), 40(1)(bb); 40(4); 41, 41(a), 41(b); 72. *Municipal Government Act*. R.S.A. 2000, c. M-26 s. 197(2).

Orders Cited: F2004-004, F2005-14, F2008-029, F2009-041; F2019-41, and F2021-39.

I. BACKGROUND

[para 1] The Complainant alleges that the Village of Longview (the Public Body) disclosed her personal information in contravention of the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act).

[para 2] On February 13, 2018, the Complainant sent an e-mail (the E-mail) to the Councilors of the Public Body. In the E-mail the Complainant expresses concern with the past performance of a third party engineering firm (the Engineering Firm) contracted to provide services to the Public Body and concern that the Public Body would retain the services of the Engineering Firm again in the future. To summarize, the Complainant asserts that the Engineering Firm was delinquent in fulfilling its obligations to the Public Body and that the Public Body should not retain its services any further.

[para 3] On February 15, 2018, the Public Body's Chief Administrative Officer (CAO) forwarded the E-mail to the Engineering Firm. On February 20, 2018, the E-mail was discussed in a public Council meeting of the Public Body. Subsequently, on March 1, 2018 the Engineering Firm e-mailed the Complainant, and therein informed her that the contents of the E-mail were defamatory. Included in an attachment to the March, 2018 e-mail was a letter reiterating the accusation that the E-mail was defamatory, and a copy of the E-mail itself.

[para 4] On March 23, 2018, the Complainant filed a complaint with this Office alleging that when the CAO forwarded the Email to the Engineering Firm, the Public Body disclosed her personal information in contravention of the Act. Investigation and mediation did not resolve the issues between the parties and the matter proceeded to this Inquiry.

II. ISSUES

Issue A: Did the Public Body disclose the Complainant's personal information to the contractor? If yes, did it have authority to do so under sections 40(1) and 40(4) of the Act?

III. DISCUSSION OF ISSUES

Issue A: Did the Public Body disclose the Complainant's personal information to the contractor? If yes, did it have authority to do so under sections 40(1) and 40(4) of the Act?

[para 5] At various points in the submissions, the Complainant and the CAO accuse each other of taking actions calculated to cause harm. I do not find that there is any evidence on which I could conclude that either one intended to harm the other. I do not consider allegations of this nature further.

[para 6] The E-mail contained information that is the Complainant's personal information under the definition of "personal information" in sections 1(n)(i), (iii), and (ix) of the Act. The personal information includes the Complainant's first and last name, e-mail address, marital status, opinions about the Engineering Firm, and opinion on whether the Public Body should continue to do business with it. Sections 1(n)(i), (iii), and (ix) state,

(n) “personal information” means recorded information about an identifiable individual, including

(i) the individual’s name, home or business address or home or business telephone number,

(iii) the individual’s age, sex, marital status or family status,

(ix) the individual’s personal views or opinions, except if they are about someone else;

[para 7] The E-mail contains the following statement regarding confidentiality:

This email communication is intended as a private communication for the sole use of the primary addressee and those individuals listed for copies in the original message. The information contained in this email is private and confidential and if you are not the intended recipient you are hereby notified that copying, forwarding or other dissemination or distribution of this communication by any means is prohibited. If you are not specifically authorized to receive this email and if you believe that you received it in error please notify the original sender immediately. We honour similar requests relating to the privacy of email communications.

[para 8] The Complainant argues that the confidentiality statement renders the E-mail a “FOIP-protected” document that the Public Body could not disclose. I address this argument further on.

[para 9] Once the Complainant has demonstrated that the Public Body disclosed her information, the Public Body bears the burden of proof to demonstrate that it complied with the Act when it disclosed the Complainant’s personal information. (Order F2009-041 at paras. 25-28).

[para 10] The Public Body does not dispute that its CAO forwarded the E-mail to the Engineering Firm as described by the Complainant. The CAO explains the considerations that led him to forward the e-mail to the Engineering in an unsworn letter included in the Public Body’s submission.

[para 11] Upon receipt of the E-mail, the CAO undertook to validate the concerns about the Engineering Firm raised by the Complainant. The CAO concluded that the Complainant’s concerns were false, and also that the Public Body was pleased with the work that the Engineering Firm had done. The CAO subsequently sought legal advice about the contents of the E-mail. The CAO was informed that the Complainant’s concerns amounted to false claims about the Engineering Firm and constituted an “attempt to impact [the Engineering Firm] financially”, which rendered the E-mail “slander and libelous.”

[para 12] The CAO further explains that, on the understanding that the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the MGA) requires municipalities to operate in a

transparent manner, the Mayor of the Public Body decided to verbally address the E-mail in a Council meeting. Agenda Packages are typically made public by posting on the Public Body's website. The Public Body did not publish the E-mail as part of the Council Agenda Package for the meeting after receiving legal advice that it could be sued for libel for publishing the letter.

[para 13] Knowing that the E-mail would be addressed at a public council meeting, the CAO arrived at the conclusion that the E-mail, "was now public information and could be shared." The CAO then forwarded the E-mail to the Engineering Firm on February 15, 2018. The CAO's position that the E-mail was now public information appears to be informed by Service Alberta's FOIP – Frequently Asked Questions for Municipalities document.¹ The CAO observes the following portions of that document that relate to Council Records:

COUNCIL RECORDS

14. How should municipalities handle letters from residents that become part of the council agenda packages forwarded to council members?

- Letters from residents normally include personal information, such as name, address, phone numbers, and possibly opinions and other personal information. In deciding whether to disclose the personal information of individuals at public council or committee meetings, municipalities need to balance the dual objectives of open government and protection of privacy.
- Under section 197 of the *Municipal Government Act* (MGA), meetings of a council or a council committee must be conducted in public, except where there is authority to hold the meetings in the absence of the public. Under section 198 of the MGA, the public has a right to be present at council and committee meetings that are conducted in public. Given the public nature of council and committee meetings, an individual writing to a councillor or to the administration of a municipality may have a reasonable expectation that their correspondence, including their personal information, could be disclosed at a public council or committee meeting.

[para 14] In the Public Body's submission it omitted the following further points from the FOIP – Frequently Asked Questions for Municipalities that appearing immediately beneath the first two, quoted above.

- If this is the practice of the municipality, then notice of this practice should be made available to the public. For example, notice may be placed in a brochure and on the municipality's web site, or in publications the public may refer to when looking up council member contact information.
- Sometimes individuals will send in letters containing sensitive personal information, such as information about the health of family members, vacation plans or financial circumstances. When it is not clear that the writer expected the information to be made public, the municipality should contact the individual and confirm that it was their

¹ Available at: <https://www.servicealberta.ca/foip/documents/faq-municipalities.pdf>

intention that the information be disclosed to the public. Alternatively, a severed record or summary of the information inquiry or complaint could be prepared for use at the council meeting.

- Where the disclosure of such a letter would clearly be an invasion of the author’s personal privacy but the personal information is needed by councilors to fully inform their decision-making, the matter could be discussed in a portion of the meeting that is closed to the public. In that case, the letter would not be attached to or distributed as part of the agenda package.

[para 15] On February 20, 2018, the E-mail (referred to as a letter) was discussed in a public council meeting. The minutes of the meeting contained the following item under the heading “CORRESPONDENCE FROM RESIDENTS”:

- [Complainant’s last name] – [Engineering Firm] – Mayor addressed errors in letter

[para 16] The minutes of the meeting do not indicate what was said about the E-mail. The minutes of the February 20, 2018 council meeting are made public by posting on the Public Body’s website². The agenda for the February 20, 2018 council meeting is also available on its website.³ The agenda contains the following information under the heading “CORRESPONDENCE FROM RESIDENTS”:

5.2 Letter from [Complainant’s Last Name] re: [Engineering Firm]

[para 17] The CAO also states that disclosing the E-mail was done in order to maintain good relations with the Engineering Firm and avoid wasting public funds by replacing the Engineering Firm. He states,

The February 13th email to the Mayor was the third attempt in two years to have the Village terminate its contract with [the Engineering Firm] and it was based on false claims.

The relationship between a municipality and its consultants is based on the belief that the consultants are professional and have expertise in the field in which they are contracted. Engineering and municipalities tend to be long-term relationships with engineers developing and retaining knowledge of the technical details of a community’s infrastructure, roads, underground water and sewer, water treatment and disposal. We contract them to maintain the details and interpretation of provincial and federal legislation as it changes and pertains to the operation of the municipality. Changing engineering firms can cost a municipality \$100s of thousands of dollars in replacing detailed knowledge with a different firm.

...

² The minutes of the February 20, 2018 meeting remain available on-line as part of the March 20, 2018 Agenda Package, at <http://village.longview.ab.ca/wordpress/wp-content/uploads/2018/03/March-20-Agenda-Package.pdf>

³ Available at: http://village.longview.ab.ca/wordpress/wp-content/uploads/2018/02/2.0_Agenda_20Feb.pdf

The release of [the Complainant's] contact information was an attempt to save the Village from financial expenses based on the repeated attempts by [the Complainant] to have the Village terminate the relationship with [the Engineering Firm].

[para 18] I now consider the parties' arguments that disclosure was or was not permitted under the Act. I note that while the Public Body explained why it disclosed the E-mail, it did not point to any particular section of the Act that it argues would permit to do so. However, in the discussion below, I consider the sections of the Act that the Public Body's explanation appears to engage.

[para 19] Regarding the Complainant's argument that the confidentiality statement included in the E-mail renders it a "FOIP-protected" document, the presence of the confidentiality statement does not bind the Public Body to keep the E-mail secret. At most, the confidentiality statement is an indicator that the Public Body did not have the Complainant's consent to disclose the E-mail. The lack of consent restricts the Public Body from disclosing personal information as would be otherwise be permitted under section 40(1)(d) (which permits disclosure with consent) but does not affect the Public Body's authority to disclose personal information pursuant any of the numerous other subsections of section 40(1), which do not require consent.

[para 20] As to the statements in the FOIP – Frequently Asked Questions for Municipalities document, those statements are for guidance only, and are not binding law. Moreover they speak only to personal information in the context of a council meeting and not to disclosing personal information outside of that context. I also note that the guidance clearly indicates that some personal information may be too sensitive to disclose in a council meeting, and does not state that letters from residents may always be disclosed during council meetings. Section 197(2) of the MGA permits portions of council meetings to take place *in camera* when a matter is within an exception to disclosure under the Act:

(2) Councils and council committees may close all or part of their meetings to the public if a matter to be discussed is within one of the exceptions to disclosure in Division 2 of Part 1 of the Freedom of Information and Protection of Privacy Act.

[para 21] I consider that the CAO's statements suggest that disclosing the E-mail was part of its business of dealing with the Engineering Firm. I also note that as an entity contracted to perform services for the Public Body, per the definition of "employee" in section 1(e) of the Act, the Engineering Firm is its employee.

(e) "employee", in relation to a public body, includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body;

[para 22] In light of the relationship between the Public Body and the Engineering Firm, I have considered whether disclosure would be permitted under sections 40(1)(h) or (i) of the Act.

40(1) A public body may disclose personal information only

...

(h) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member,

(i) to an officer or employee of a public body or to a member of the Executive Council, if the disclosure is necessary for the delivery of a common or integrated program or service and for the performance of the duties of the officer or employee or member to whom the information is disclosed,

...

[para 23] In either case, I find that disclosure is not permitted. The Public Body makes no case, and I cannot see how, disclosing the Complainant’s personal information would be necessary for the Engineering Firm to provide services to the Public Body, or to delivering a common or integrated program.

[para 24] I also consider that it is part of the Public Body’s responsibility to address concerns and complaints of its residents, such as those contained in the E-mail. Previous Orders of this Office have found that section 40(1)(c) permits public bodies to disclose information in order to address complaints. See, for example, Orders F2005-014, F2004-004, and F2021-39. Section 40(1)(c) states,

40(1) A public body may disclose personal information only

...

(c) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,

[para 25] Section 41 of the Act sets criteria for determining whether disclosure is consistent with a purpose for collection:

41 For the purposes of sections 39(1)(a) and 40(1)(c), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure

(a) has a reasonable and direct connection to that purpose, and

(b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.

[para 26] The term “necessary” in section 41(b) has a broader meaning than “indispensable.” Disclosure is necessary when it permits a means by which a public body may achieve the objectives of a duty, or without disclosure a public body would be less

effective in taking measures that help to bring about desired goals. (Order F2008-029 at paras. 51 – 52; Order F2019-41 at paras. 73 - 74).

[para 27] I consider whether disclosure was permitted under section 40(1)(c) in this case.

[para 28] The Public Body states that it did not collect the Complainant's information since she sent it to the Public Body. That view is incorrect. The Public Body collected the Complainant's personal information when it retained the E-mail.

[para 29] While the Public Body does not explicitly state the purpose for which it collected the Complainant's personal information, the evidence indicates that the E-mail was collected in order for the CAO to determine if the concerns about the Engineering Firm raised by the Complainant were valid and to address them based on this determination. I now consider if the Public Body disclosed the E-mail for the same purpose.

[para 30] The CAO makes several specific statements about why the E-mail and the Complainant's personal information was disclosed to the Engineering Firm. The CAO states,

The municipal purpose of the release of information was to protect the working relationship between the Village and its engineers.

[para 31] With regard to the disclosure of personal information that is the Complainant's contact information, the CAO states,

The release of [the Complainant's] contact information was an attempt to save the Village from financial expenses based on the repeated attempts by [the Complainant] to have the Village terminate the relationship with [the Engineering Firm].

[para 32] I do not find that the purpose for disclosure was an "attempt to save the Village from financial expenses" that would be caused if the Public Body terminated its relationship with the Engineering Firm. While the E-mail can fairly be said to be aimed at disrupting or terminating the relationship between the Public Body and the Engineering Firm, control over the relationship lies between the Public Body and the Engineering Firm. The Complainant is merely a citizen critical of that relationship. There is no evidence that the E-mail had any potential to cause the Public Body to terminate its relationship with the Engineering Firm, or incur any associated expenses. Neither has the Public Body elaborated on how disclosing the Complainant's personal information to the Engineering Firm would serve the end of protecting its relationship or how not disclosing it may result in switching engineering firms. The Public Body was able to conclude that the Complainant's concerns were unfounded and that it was satisfied with the Engineering Firm without disclosing the Complainant's personal information.

[para 33] However, I note that the Public Body also stated another purpose for disclosing the Complainant's personal information, as follows:

[The Complainant] is attempting to use her privacy statements on the email and the FOIP Act to hide her actions in slandering the contractor of the Village, which could have a significant impact on the financial operation of the Village if the Village acted upon her unfounded accusations. Not being a lawyer and not wanting to continue to be put in the middle of a personal grudge between [the Complainant]/[the Complainant's Spouse] and [the Engineering Firm], I felt it was important for the two parties to sort it out.

[para 34] The Public Body's assertion that there is a "personal grudge" between the Complainant and her spouse and the Engineering Firm appears to be based on the fact that, as stated by the CAO, the E-mail is the Complainant's third attempt in two years to have the Public Body terminate its relationship with the Engineering Firm. While the Complainant denies carrying a grudge, she does not deny the assertion about the number of times she has attempted to end the relationship between the Public Body and the Engineering Firm. I also note that when the CAO forwarded the E-mail to the Engineering Firm he stated, "We have some challenging people in this community." The phrase undoubtedly refers to the Complainant as a challenging person.

[para 35] In my view, a municipality collecting personal information of its residents for the purpose of addressing their concerns is one thing, while disclosing personal information of its residents for the purposes of enabling a private entity to contact a concerned resident is another. One permits a public body to address its concerns, the other permits a private entity to address the private entity's concerns. For the reasons given earlier, I have found that the Public Body collected the E-mail for the former purpose; for the reasons below, I find that disclosed it for the latter.

[para 36] Prior to disclosing the E-mail, the CAO determined the validity of the Complainant's concerns and was aware that the Mayor of the Public Body planned to address the E-mail in a council meeting. That was the extent of the Public Body's efforts to address the E-mail. There is no apparent connection between those efforts and disclosing the E-mail to the Engineering Firm. Rather, the statement from the CAO about the Complainant's personal grudge, reference to her as a "challenging person", and desire to extricate itself from dealing with the E-mail indicate that discussing the Complainant's concerns in a Council Meeting was as far as the Public Body intended to go in terms of addressing the E-mail, and dealing with a "challenging person." The Public Body's purpose for collection was exhausted by addressing the E-mail in the Council Meeting.

[para 37] Disclosing the E-mail to the Engineering Firm was thus not done for the purposes of permitting the Public Body to address the Complainant's concerns therein. Rather, it was done to enable the Engineering Firm to contact the Complainant and address *its* concerns about the E-mail. The CAO appears to have forwarded the E-mail so that the Engineering may address the issue of "slander" in particular.

[para 38] I recognize that the Public Body states that the purpose of disclosure was to allow the "two parties" to "sort it out" which could be taken to suggest an intention to bring the Complainant and the Engineering Firm together; however the fact is that the

Public Body only provided the Complainant’s personal information, including her e-mail address to the Engineering Firm. The Public Body did not provide any contact information for the Engineering Firm to the Complainant. Further, the Public Body simply forwarded the E-mail to the Engineering Firm with the comment “We have some challenging people in this community” and does not indicate that it informed either the Engineering Firm or the Complainant of its desire to have them sort out matters among themselves. The practical result of disclosure was that the Engineering Firm became aware of the Complainant’s identity, her concerns, and acquired the means to contact her by e-mail. The one-sided nature of disclosure indicates that the Public Body disclosed the E-mail for the purpose of enabling the Engineering Firm to contact the Complainant directly, if *it* chose to. That purpose is a far cry from the purpose for which the Public Body collected the E-mail.

[para 39] Since the purpose for disclosure is not the same as the purpose for collection, whether disclosure is permitted under section 40(c) depends upon whether disclosure was for a purpose consistent for the purpose for which it was collected, pursuant to the terms of section 41 of the Act.

[para 40] Leaving aside the question of whether the purpose for disclosure had a reasonable and direct connection to the purpose for collection as required by section 41(a) of the Act, the requirement in section 41(b) is not met in this case. The Public Body argues that disclosure was necessary as part of its responsibility to operate an engineering program, which it submits is a legally authorized program of the Public Body. However, it does not elaborate on how or why disclosure was necessary for its engineering operations. I cannot see that its engineering operations would be effected whether or not the E-mail was disclosed. To the extent that responding to concerns raised by its residents may be said to be a program of the Public Body, since the Public Body was able to address the concerns in the E-mail without disclosure, I cannot see how disclosure was necessary to that program either. I find that disclosure was not for a purpose consistent with the purpose for collection.

[para 41] Lastly, I consider that the CAO believed that disclosure of the E-mail was permitted since it was public information by virtue of being mentioned in a public council meeting. Disclosure of publicly available personal information is permitted under section 40(1)(bb) of the Act:

40(1) A public body may disclose personal information only

...

(bb) when the information is available to the public,

[para 42] The CAO disclosed the E-mail on February 15, 2018, prior to the February 20, 2018 Council meeting at which the E-mail was addressed. Accordingly, disclosure was not permitted under section 40(1)(bb) of the Act. Section 40(1)(bb) is specific to permitting disclosure when personal information *is* available to the public, not when it will be, or is imminently, publicly available. In contrast to section 29(1)(b) of the Act,

section 40(1)(bb) contains no language permitting disclosure of personal information that will become available. Section 29(1)(b) states,

29(1) The head of a public body may refuse to disclose to an applicant information

...

(b) that is to be published or released to the public within 60 days after the applicant's request is received.

[para 43] Accordingly, disclosure of any personal information to the Engineering Firm was premature, and not permitted under section 40(1)(bb).

[para 44] I also note that even had disclosure taken place after the February 20, 2018 council meeting, very little of the Complainant's personal information was made public in that meeting. The E-mail itself does not appear to have been made public, nor was a recording of the February 20, 2018 council meeting made, let alone made publicly available. Accordingly, the only publicly available personal information about the Complainant in relation to the E-mail is the information presented in the Minutes and Agenda of the February 20, 2018 meeting, quoted above.

[para 45] At most, a member of the public could glean from the information in the minutes and agenda that the Public Body received a letter about the Engineering Firm from someone with the last name stated in the minutes and agenda, which - according to the Mayor of the Public Body - contained errors. As such, the fact that a person with that last name sent a letter about the Engineering Firm containing errors is the extent of personal information that the Public Body could disclose under section 40(1)(bb). None of the other Complainant's personal information such as her first name, contact information, marital status, opinions, and e-mail address were publicly available, and thus could not be disclosed on the basis that it was publicly available.

[para 46] I recognize that the CAO argues that information from the E-mail that was verbally disclosed during the Council Meeting would also have been publicly available. I do not find that any of the Complainant's personal information is publicly available. The Public Body has not provided any evidence of what was actually said at the February 20, 2018 council meeting. Therefore, I cannot determine what, if any, of the Complainant's personal information was actually mentioned.

[para 47] Since the Public Body has not established that it was permitted to disclose information under section 40(1), it has also failed to establish that it complied with section 40(4). Section 40(4) states,

(4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.

IV. ORDER

[para 48] I make this Order under section 72 of the Act.

[para 49] I order the Public Body to cease disclosing the Complainant's personal information in contravention of the Act.

[para 50] I order the Public Body to confirm to me and the Complainant that it has complied with this Order within 50 days of receiving it.

John Gabriele
Adjudicator
/bah