



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **INVESTIGATION REPORT 112-2022**

### **Rural Municipality of North Qu'Appelle No. 187**

**March 6, 2023**

#### **Summary:**

The Rural Municipality of North Qu'Appelle No. 187 (RM) recorded the names of individuals that attended a Public Hearing of Council, which it later disclosed in its minutes on the RM's website. One of the individuals, the Complainant, made a complaint to the RM, and the RM took the position that no privacy breach had occurred. The Complainant was not satisfied and so asked the Commissioner to undertake an investigation. The Commissioner found that the RM did not have an identified purpose for collecting the Complainant's name pursuant to section 24 of LA FOIP. Because of this, the Commissioner also found that the RM did not have authority to disclose the Complainant's name and so a privacy breach occurred. The Commissioner recommended that within 30 days of issuance of this Investigation Report, the RM remove the Complainant's name from meeting minutes in question, and also apologize to the Complainant. The Commissioner further recommended that within 30 days of issuance of this Investigation Report that the RM review its policies, procedures and practices for collecting names of individuals who attend meetings to ensure it is guided by a stated purpose for doing so that is in compliance with section 24 of LA FOIP. The Commissioner added that the RM should ensure that the manner of its collection of names is in compliance with subsections 25(1) and 25(2) or subsection 25(3) of LA FOIP.

#### **I BACKGROUND**

[1] On May 9, 2022, the Complainant submitted a privacy complaint to the Rural Municipality of North Qu'Appelle No. 187 (RM) as follows:

Could you kindly tell me how my name ended up on the minutes of [date redacted] Public Hearing of Council. I did not sign any paper indicating you could use my name in public. I was attending the RM 187 council meeting on [date redacted] and I did not sign any papers indicating my presence. Could you kindly remove my name!

[2] On May 12, 2022, the RM responded to the Complainant advising as follows:

Under *The Planning and Development Act, 2007, The Municipalities Act* and the RM's Public Notice Policy Bylaw No. 05-10, certain matters to be considered by a municipal council require public notice declaring a public hearing will be held. The public hearings require that minutes be recorded. Historically in the municipality, the minutes include names of parties participating in the public hearing.

The RM of North Qu'Appelle has historically recorded the names of participating parties to the hearings, whether that participation occurs as a presenter or an observer to the proceedings, in the interest of transparency, disclosure of public interest and as a mechanism to record public interest in the matter to the applicable Agency or Ministry requiring a copy of the minutes for their decision process. Evidence of this can be found in the following Public Hearing Minutes, of which, some are available on the RM's website...

Under *The Local Authority Freedom of Information and Protection of Privacy Act*, subsection 28(2)(n)(i), a local authority may disclose personal information where, in the opinion of the head, public interest outweighs an invasion of privacy. As stated above, this Municipality has historically recorded the names of participants present at a public hearing in the interest of transparency and public interest and feels that, by the nature of the notice of a public hearing with an opportunity for public representations, a person ought to reasonably know and/or expect their personal information may be captured and recorded during that event should they exercise the right to participate.

[3] On May 18, 2022, the Complainant contacted my office requesting my office undertake an investigation, stating as follows:

On [date redacted] I was attending an RM meeting, in the middle of this meeting council stopped and went into a Public Hearing (in which I had no interest). When I was reviewing the minutes on line, I noticed that my name "[first initial and last name of Complainant]" was entered on the minutes. I contacted the RM office as [sic] asked them, how did my name end up on the minutes? The RM's response is: The RM of North Qu'Appelle has historically recorded the names of participating parties to the hearings, whether that participation occurs as a presenter or an observer to the proceedings, in the interest of transparency, disclosure of public interest and as a mechanism to record public interest in the matter to the applicable Agency or Ministry requiring a copy of the minutes for their decision process.

If this is the case then I know for a fact, that their minute taking is NOT accurate at all. As for the dates [they] listed, my spouse and I were both on the phone for the [date redacted] public hearings and [they] entered on the minutes “0 persons by telephone” on both of these minutes (9:15 & 9:30). We were both there. [Their] minutes were entered wrong!

[They] stated “public interest outweighs an invasion of privacy” again, I was not there for the Public Hearing, I did not sign in or consent to the RM187 using my name and putting it out to the public.

[They] stated “by the nature of the notice of a public hearing with an opportunity for public representations, a person ought to reasonably know and/or expect their personal information may be captured and recorded during that event should they exercise the right to participate.” Again, I did not exercise my right to participate.

There was a public notice of the RM meeting happening that very same day, and to expect my personal information to be captured is not cutting it, if they didn’t know who I was personally, they wouldn’t gotten a name because no one signed in. Hence, I did not sign in for any meeting, RM council meeting or the Public Hearing meeting.

Going through the evidence of public hearing [they] submitted, they [sic] Historically they have entered x number of people were in attendance. So, I ask again, [sic] How did my name end up on the minutes of a public meeting without my consent.

Could you please look into this matter for me and hopefully have them remove my name from the Public Hearing Minutes of [date redacted].

[4] On June 14, 2022, my office notified the RM and the Complainant that my office would be investigating this matter.

[5] On October 3, 2022, the RM provided a response to my office’s notice of investigation.

## **II DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction?**

[6] The RM qualifies as a “local authority” pursuant to subsection 2(f)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Therefore, I have jurisdiction to undertake this investigation.

**2. Is personal information involved and did a privacy breach occur?**

[7] In order for a privacy breach to occur, personal information as defined by subsection 23(1) of LA FOIP must be involved. The RM has taken the position that the information at issue does not qualify as personal information and as such, no privacy breach has occurred. In its submission to my office, the RM asserted:

Upon review of the definitions in section 23 of LA FOIP, and review of the resources, *‘Privacy Breach Guidelines for Government Institutions and Local Authorities’* and the *‘Privacy Breach Investigation Questionnaire’*, the RM of North Qu’Appelle No. 187 is taking the position that a privacy breach for this instance did not occur. Specifically citing LA FOIP subsection 23(1)(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.’*

...

[The Complainant] attended the [date redacted], RM council meeting as an observer and remained in the room when the regular meeting was recessed, and the Public Hearing was opened. As is the protocol of a public hearing, anyone can participate in several ways: by observing, and/or providing a verbal or written or electronic submission to the Council body for consideration. The RM has no way to know who is there and for what purpose at the hearing and records all attendees whether they present a position or observe. This has been a historical practice of this Municipality...

On [date redacted] the RM of North Qu’Appelle No. 187 did not consider recording a Public Hearing attendee’s name as a breach of privacy as, in the RM’s interpretation of definitions, there is no identifiable information in the Minutes pursuant to the definitions of LA FOIP section 23. At this date, the RM maintains that no privacy breach occurred.

[8] As described in the background of this Report, the RM recorded the Complainant’s name in meeting minutes as having attended a hearing. Subsection 23(1)(k) of LA FOIP provides:

**23(1)** Subject to subsections (1.1) and (2), **“personal information”** means personal information about an identifiable individual that is recorded in any form...

...

(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.

- [9] To be personal information, two elements must be present: 1) The information must be about an identifiable individual; and 2) The information must be personal in nature (*Guide to LA FOIP*, Chapter 6, “Protection of Privacy”, updated February 27, 2023 [*Guide to LA FOIP*, Ch. 6], p. 39).
- [10] “Identifiable” means the individual can be identified from the information, or the information, when combined with information otherwise available, could reasonably be expected to allow the individual to be identified (*Guide to LA FOIP*, Ch. 6, p. 40).
- [11] “Personal in nature” requires that the information reveal something personal about the identifiable individual (*Guide to LA FOIP*, Ch. 6, p. 41).
- [12] In my office’s [Investigation Report 237-2016](#) concerning the Rural Municipality of Rosthern (Rosthern), I considered at paragraph [11] that the appearance of the complainant’s name in Rosthern’s minutes in that matter constituted their personal information. This was because their name, coupled with the description of Council’s decision, revealed circumstances involving the complainant.
- [13] In this matter, the Complainant was at the public hearing as an observer and not in any official or professional capacity, which the RM has acknowledged. Similar to the Rosthern matter, the Complainant’s name in the meeting minutes indicated something personal in nature about them – that they were at that particular meeting on that date. As such, I find the Complainant’s personal information is involved pursuant to subsection 23(1)(k)(ii) of LA FOIP.
- [14] Next, I need to consider the RM’s purpose for collecting the names of those who attended the hearing. The RM needed to demonstrate its purpose for collecting the Complainant’s name pursuant to section 24 of LA FOIP, which provides as follows:

**24** No local authority shall collect personal information unless the information is collected for a purpose that relates to an existing or proposed program or activity of the local authority.

- [15] In this context, “purpose” means the purpose for which personal information was obtained or compiled, the object to be attained or the thing intended to be done, e.g., the administration of a program, the provision of a service or other activity. The purpose of a collection means the reason(s) the personal information is needed and the use(s) that the government institution will make of the personal information (*Guide to LA FOIP*, Ch. 6, p. 133).
- [16] “Relates to” should be given a plain but expansive meaning. The phrase should be read in its grammatical and ordinary sense. There is no need to incorporate complex requirements (such as “substantial connection”) for its application, which would be inconsistent with the plain unambiguous meaning of the words of the statute. “Relating to” requires a purpose with some connection to an existing or proposed program or activity of the local authority (*Guide to LA FOIP*, Ch. 6, p. 133).
- [17] “Existing” means that the program or activity must be in place at the time the personal information is collected (*Guide to LA FOIP*, Ch. 6, p. 133).
- [18] “Proposed” means something offered for consideration or acceptance; a suggestion.<sup>370</sup> To put forward an idea or plan for consideration. In this context, it means the personal information was collected for a purpose relating to a program that is at the stage of being proposed but not yet existing (*Guide to LA FOIP*, Ch. 6, p. 133).
- [19] “Program” means formally recognized activities or functions designed to deliver specific services that are related to a specific subject matter or topic. Programs do not refer to computer programs (*Guide to LA FOIP*, Ch. 6, p. 133).
- [20] “Activity” is an individual action designed to assist in carrying out an operating program. For example:

- Skills training assists a social assistance recipient to return to the workforce and is one facet of the social assistance program.
- Driver testing is required in determining eligibility for a driver's licence as part of the driver-licensing program.

(*Guide to LA FOIP*, Ch. 6, p. 134)

[21] The local authority must have a demonstrable need for the personal information such that the operating program or activity would not be viable without it (*Guide to LA FOIP*, Ch. 6, p. 134)

[22] Regarding its purpose or reason for collecting names, the RM provided as follows:

[The Complainant] attended the RM Council meeting on [date redacted], at which the agenda noted there would be a public hearing set aside. The past practice of this Municipality has been that attendees at a public hearing have their names recorded in the minutes that would then be publicized once the Minutes are adopted by Council and would be public information when the Minutes are forwarded to any other Government Body/Agency/Ministry requiring a copy for due process as outlined in other statutes.

...

The question about the process of recording names or identifying number of attendees as recorded at a public hearing is dependent on the Administrator of the Municipality at that time. Each Administrator will have their own practice, as determined by interpretation of statutes, training, mentoring advice and municipal policy/bylaw and past practices of the municipality.

During the period of 2020 through 2022, during Covid19, the RM did not hold meetings in person and used teleconference. The conference call feature identified the number of callers on the line, however an attendance or sign-in was not required and names of the individuals was not known unless they identified themselves when addressing the Council.

[23] The RM has identified that the process of recording names depends on different factors, including different "statutes" or "municipal policy/bylaw", or the current administrator's practice. The RM also stated that the name may be needed when it forwards its minutes to government bodies, etc., who require a copy for "due process as outlined in other statutes". The RM does not describe what these statutes may be, but in the background of this

Investigation Report, I noted that the RM referred to *The Planning and Development Act, 2007*, *The Municipalities Act* and its “Public Notice Policy Bylaw No. 05-10” as being relevant.

[24] The RM, however, has not pointed to any specific provision within these acts or bylaw that outlines any purposes relating to its existing or proposed programs or activities. Based on a review of these documents, I am not able to identify any provisions that offers any such purposes, either. In other words, the RM still has not made it clear why it needed to collect the Complainant’s name. As such, I find that the RM did not have an identified purpose for collecting the Complainant’s name pursuant to section 24 of LA FOIP. Because of this, I also find the RM did not have authority to disclose the Complainant’s name by putting it in the minutes and posting the minutes to the RM’s website, and so a privacy breach occurred.

[25] As of the date of the issuance of this Report, I note that the Complainant’s name is still listed on the public hearing minutes on the RM’s website. Within 30 days of issuance of this Investigation Report, I recommend the RM remove the Complainant’s name from meeting minutes in question, and also apologize to the Complainant. I further recommend that within 30 days of issuance of this Investigation Report that the RM review its policies, procedures and practices for collecting names of individuals who attend meetings to ensure it is guided by a stated purpose for doing so that is in compliance with section 24 of LA FOIP. In addition, the RM should ensure that the manner of its collection of names is in compliance with subsections 25(1) and 25(2) or subsection 25(3) of LA FOIP.

### **III FINDINGS**

[26] I find I have jurisdiction to undertake this investigation.

[27] I find that personal information is involved pursuant to subsection 23(1)(k)(ii) of LA FOIP.



[28] I find that the RM did not have an identified purpose for collecting the Complainant's name pursuant to section 24 of LA FOIP. Because of this, I also find the RM did not have authority to disclose the Complainant's name and so a privacy breach occurred.

#### **IV RECOMMENDATIONS**

[29] I recommend, that within 30 days of issuance of this Investigation Report, the RM remove the Complainant's name from meeting minutes in question, and also apologize to the Complainant.

[30] I recommend that within 30 days of issuance of this Investigation Report that the RM review its policies, procedures and practices for collecting names of individuals who attend meetings to ensure it is guided by a stated purpose for doing so that is in compliance with section 24 of LA FOIP. In addition, the RM should ensure that the manner of its collection of names is in compliance with subsections 25(1) and 25(2) or subsection 25(3) of LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 6th day of March, 2023.

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