



INVESTIGATION REPORT 154-2021

Rural Municipality of North Qu'Appelle No. 187

June 20, 2022

Summary:

The Organized Hamlet of Pasqua Lake, part of the Rural Municipality of North Qu'Appelle No. 187 (RM), collected information about a public health complaint involving a specific house number from an unknown source and then recorded the information on its agendas and minutes. The agendas and minutes were then posted to the RM's website. The Complainant felt the information was their personal information and submitted a privacy breach complaint to the RM. Once 30 days had passed and the Complainant had not received a response from the RM, the Complainant requested the Commissioner undertake an investigation. Upon investigation, the Commissioner found that the information at issue qualified as identifiable personal information and privacy breaches had occurred. The Commissioner recommended the RM implement annual access and privacy training for staff and develop and implement policies and procedures related to responding to privacy breaches and managing personal information. The Commissioner also recommended the RM ensure the Hamlet Board amends the minutes and agendas to remove the Complainant's personal information from all versions including those that are available via public inspection and on the RM's website.

I BACKGROUND

[1] On April 20, 2021, the Complainant submitted a privacy complaint to the Rural Municipality of North Qu'Appelle No. 187 (RM) as follows:

I would like to know how my address was put on the Hamlet Agenda on November 3, 2020 and remained on the Agenda until February 16, 2021 in regards to "Health Concerns"?

From the information that I have, I was contacted by the Saskatchewan Health Department on October 22 2020 when they informed me a ratepayer tipped them off

and they had to contact the RM office to get my phone number. This phone call came in at the end of the day 4:30 – 5pm and they left me a message to call them back. The next morning October 23 2020 at 9 am I returned the call to the Saskatchewan Health Department and they deemed the situation was solved and all a mistake but they still had to call and verify.

My big concern is how did this end up on the Hamlet Agenda 12 days after the issue was resolved. I can only assume a leak from the RM office happened, or the chair himself called in the complaint.

My next concern is my address is spewed all over the internet RM website, under Hamlet minutes and agenda for years to come - relating to Health Concerns that never happened and remained on the agenda for 4 months. I believe this would be breach [sic] of personal information and a harassment from the Chair and Hamlet Board.

Again, I ask how and why was my address [sic] put on the Hamlet Agenda on November 3, 2020 and remained on the Agenda until February 16, 2021 in regards to “Health Concerns”?

- [2] On May 20, 2021, the Complainant contacted my office advising they had not received a response to their privacy breach complaint and requested my office conduct an investigation into the matter. The Complainant requested an investigation into how and why their address was put on the Organized Hamlet of Pasqua Lake (the Hamlet) agenda on November 3, 2020, and remained on the agenda until February 16, 2021.
- [3] On May 25, 2021, my office contacted the RM to advise it that we had received a complaint, and inquired if the RM was looking into the matter and when the Complainant should expect a response.
- [4] On June 2, 2021, the RM advised my office that it could not commit to a timeline to respond to the Complainant’s privacy breach complaint.
- [5] As a timeline to respond could not be established, my office contacted the Complainant to advise my office would proceed with an investigation.
- [6] On June 3, 2021, my office notified the Complainant and the RM that we would be investigating the matter pursuant to section 32 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

- [7] On July 5, 2021, the RM emailed my office seeking clarification on the complaint as it could not identify a November 3, 2020 Hamlet agenda. The Administrator sought clarification that would allow them to proceed with the investigation.
- [8] On July 13, 2021, my office followed up with the Complainant to request copies of the agendas described in their complaint and any other relevant documentation related to events described.
- [9] On July 14, 2021, the Complainant responded providing screen shots of some agendas and minutes, including an agenda dated November 30, 2020, not November 3, 2020 as had previously been referred to.
- [10] On July 15, 2021, my office followed up with the RM clarifying that the Complainant's concerns were regarding information recorded on their website in the "Agenda and Meeting Minutes for November 30, 2020, January 19, 2021, and February 16, 2021 related to "Public Health Concerns at #[number]".
- [11] On July 26, 2021, the RM provided my office with its submission regarding this complaint.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [12] As noted above, the Organized Hamlet of Pasqua Lake included information in its agendas and minutes that the Complainant believed qualified as their personal information that were posted on the RM's website. As I found in my office's [Investigation Report 166-2021](#), the Hamlet is an Organized Hamlet within the RM. The RM of North Qu'Appelle is a municipality, and therefore is a local authority pursuant to section 2(f)(i) of LA FOIP. Therefore, I have jurisdiction to investigate this matter.

[13] The RM, as the body that qualifies as a local authority, is responsible to ensure all RM staff, members of the RM council and members of its Organized Hamlet boards are compliant with LA FOIP.

2. Is personal information involved and is LA FOIP engaged?

[14] In order for LA FOIP to be engaged in a privacy breach investigation, there must be personal information involved, as defined by section 23(1) of LA FOIP. 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...

The Complainant alleges that “[their] address’ was put on the hamlet agenda on November 3, 2020.” ...

The email from [the Complainant] then references that [their] address remained on the Hamlet Agenda until February 16, 2021.

The included November 30, 2020 Organized Hamlet Board Agenda and Minutes reference several numbers in several items of business, as the Board did not have any other way to note/reference the area of the Organized Hamlet that the Board is discussing as business items. At no point are names or identifiable references made in the Minutes, pursuant to the definitions in LA FOIP s. 23.

...

On April 26, 2021, the RM of North Qu'Appelle No. 187 did not consider this a breach of privacy as there is no identifiable information on the Agendas or Minutes pursuant to the definitions of LA FOIP section 23. As such, the RM treated this as a ratepayer complaint, and continued harassment from this individual complainant. Upon review of the file, the RM maintains that no privacy breach occurred.

[15] I will first need to consider if the information at issue qualifies as personal information. The information recorded on the agendas and minutes identify the Complainant’s property by their house number and references a public health complaint related to the septic tank on the Complainant’s property, but the Complainant is not named.

[16] Subsection 23(1) of LA FOIP provides a list of examples of what would qualify as personal information. However, this list is not meant to be exhaustive. There can be other types of information that would qualify as personal information that are not listed. Part of that consideration involves assessing if the information has both of the following:

1. Is there an identifiable individual?
2. Is the information personal in nature?

1. Is there an identifiable individual?

[17] The number recorded on the agendas and minutes related to the Complainant's property is the house number associated to their address. It does not contain the street name; however, based on a discussion with the RM, it is my understanding there would not be another property in the Organized Hamlet with the same house number.

[18] An Ontario Information and Privacy Commissioner [Order MO 3685 Appeal MA16-620](#) discussed how releasing the address of an individual could identify an individual:

[18] In Order PO-3547, Senior Adjudicator Frank DeVries found that addresses relating to properties where alleged illegal marijuana grow operations were located by the Ontario Provincial Police (OPP) constitute personal information of identifiable individuals. He stated:

In Orders MO-2019 and PO-2265, this office determined that in certain circumstances, a "reasonable expectation of identification" arises when addresses are disclosed, because an address may be linked, using various methods or tools such as reverse directories or municipal property assessment rolls, with an owner, resident, tenant, or other identifiable individual. As in order MO-2019, the records at issue in this appeal would reveal an identifiable individual's involvement with an alleged criminal activity, whether as an accused or as an unfortunate but "innocent owner" of the property in question.

...

[20] Although the record before me does not include any names of individuals who are associated with the listed addresses, I accept that there are various methods to link an address with an owner, tenant or resident. As a result, I accept that disclosure of the addresses as they appear in the record at issue could reasonably be expected to result in an individual being identified. Therefore, I find that the property addresses amount to the personal information of identifiable individuals as contemplated by the

introductory wording of the definition of personal information in section 2(1) and paragraph (d)...

- [19] The release of the Complainant's house number could allow for the identification of the individual. As such, there is an identifiable individual.

2. Is the information personal in nature?

- [20] As knowing the house number could allow for the identification of the Complainant, I need to consider if that along with details pertaining to the complaint relating to the septic tank is personal in nature.

- [21] In making this determination, I considered the following excerpts from *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2015 ABQB 246:

[29] At para 44 of the Order, the Adjudicator quoted the Director of Adjudication in Order P2012-01:

It is not inconsistent with [Leon's] to say that in a case where the location of a property is associated with an individual in such a manner that it indicates where they reside, for example, where it is given or designated as a person's home address, the information does not merely "relate to an object or property", it relates to the individual, and it is information "about" that individual. The information is not about the person "just because" they may own the property, it is their personal information because it indicates where they live.

...

[65] The Adjudicator elaborated on the role of context in determining whether information about property can also be information about an individual. She quoted from Order P2007-004 (at para 41): "information as to the nature or state of property owned or occupied by someone is their personal information if it reflects something of a personal nature about them such as their taste, personal style, personal intentions, or compliance with legal requirements." She also quoted from Order F2012-14 (at para 42): "The distinction between what is and is not personal information is demonstrated in Ontario Order PO-2900 ... the fact that an individual – who can be identifiable by virtue of information about property – drilled a well is his or her personal information, but information about the well itself is not his or her personal information."

[66] The Adjudicator interpreted Leon's Furniture correctly. No error lies there. The next issue is whether the Adjudicator applied the definition of "personal information" reasonably in the circumstances before her.

...

[79] The interpretation of “personal information” that includes bylaw complaints about an individual, such as the Applicant, is consistent with the broad approach to interpreting privacy legislation mandated by the Supreme Court and other authorities. Since the information directly bears on an individual’s preservation of her interests in property as against the coercive powers of the City, the propriety of a broad approach to the interpretation of “personal information” is further supported.

[22] In this case, there was a public health complaint alleging that the Complainant’s septic tank on their property was deficient. This information, while related to the Complainant’s property, is not solely related to the property. The information would also be about the Complainant as it would be related to their compliance with public health and RM bylaws. As such, I find that this would qualify as being personal in nature.

[23] Therefore, I find that information about the Complainant’s house number and the public health complaint qualifies as the Complainant’s personal information pursuant to section 23(1) of LA FOIP.

[24] In conclusion, I find that personal information is involved and that LA FOIP is engaged.

3. Did a privacy breach occur?

[25] Part IV of LA FOIP outlines the circumstances in which local authorities are authorized to collect, use and/or disclose personal information. A privacy breach occurs when personal information is collected, used and/or disclosed without authority under LA FOIP.

[26] In this case, it appears the Hamlet collected the Complainant’s personal information about the public health complaint and they put it in its agenda and minutes. It then disclosed it publicly when the agendas and minutes were posted on the RM’s website. It appears the Hamlet has its own webpage on the RM website where its agendas and minutes and other information related to the Hamlet are posted.

[27] My office's [Investigation Report 234-2020](#) defines the terms collection and disclosure as follows:

[22] ...To “collect” means to gather, obtain access to, acquire, receive or obtain personal information from any source by any means (Investigation Report F-2014-002 at paragraphs [29] to [30])... To “disclose” means to share personal information with a separate entity, not a division or branch of the local authority in possession or control of that record/information (Investigation Report F-2014-002 at paragraph [53]).

[28] It is my understanding that the public health complaint relating to the septic tank on the Complainant's property was provided to the RM and based on those discussions with public health, it was determined that the RM would be responsible for following up on bylaw enforcement related to the complaint. It appears that the discussion of the public health complaint was dealt with between the RM and public health. As such, the focus of this investigation is on the collection and disclosure of the personal information by the Hamlet Board. My office asked the RM what role the Hamlet Board had in managing this public health complaint.

[29] The RM responded advising as follows:

The RM cannot answer or speak to how the information came to be on the Organized Hamlet Board's agenda, as it was never discussed publicly or brought to Council, as it would be a breach of confidentiality under both Council Code of Ethics Bylaw and the Employee Code of Conduct policy. The RM Staff nor Council has any authority over the Organized Hamlet Board; their meetings and items of business are theirs to determine. As the Organized Hamlet Board has always done when discussing a property, they have historically referred to a property by civic house number as that is the information Board Members have access to.

The area of the Organized Hamlet of Pasqua lake is a small area, and neighbours talk amongst themselves, and ask their Board members questions directly. If the Board felt this issue was something they needed to address or seek direction on, they would presumably do it through their meetings and in a public, open and transparent manner.

[30] Section 24 of LA FOIP sets out the rules for the collection of personal information by a local authority:

- 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.
- [31] The RM has taken the position that it did not provide the personal information to the Hamlet Board.
- [32] It is also the RM's position that the Hamlet Board, while part of the RM, would have collected this information from another source and not from the RM. My office reviewed the meeting minutes of the Hamlet Board for November 2020 and they do not indicate where the Hamlet Board initially obtained information related to the public health complaint. The January 2021 minutes indicate that no further updates had been provided and the February 2021 minutes claim that the RM sent an email advising that the complaint had been resolved.
- [33] My office followed up with the Complainant to determine if they had discussed details of the public health complaint with the Hamlet Board. The Complainant responded indicating that they only discussed the public health complaint directly with public health.
- [34] Based on the information provided it is unclear how the Hamlet Board was able to collect details of the public health complaint at the Complainant's address or for what purpose it had for its collection of this information. The RM has not provided my office with any information to support that the collection by the Hamlet Board was for the purposes of an existing or proposed program or activity of the RM, as required by section 24 of LA FOIP.
- [35] I find that the RM has not demonstrated that there was authority for the Hamlet Board to collect the Complainant's personal information.
- [36] The agendas and minutes posted on the RM's website disclose the house number and references the public health complaint on the RM website. These agendas and minutes would also be available for public inspection, as required by section 117(1) of *The Municipalities Act*. While section 28(2) of LA FOIP outlines instances in which a local authority may disclose personal information without consent, the RM has not provided my

office with anything to support its authority to disclose the Complainant's personal information without consent.

[37] Therefore, I find that the RM has not demonstrated that there was authority for the Hamlet Board to disclose the Complainant's personal information which is recorded in its agendas and minutes available for public inspection and on the RM's website.

[38] Further, as I have found no authority for the collection and disclosure, a privacy breach has occurred.

[39] When discussing personal information in meeting minutes, my office has previously discussed four best practice steps, which I have summarized below:

- If discussing sensitive personal information, the best practice is to provide council members with a redacted version of the personal information, or only the personal information that is necessary for the discussion. The discussion should be closed to the general public or held in camera. After coming out of the closed meeting, pass the motion with basic or no personal information.
- In meeting minutes, the least amount of personal information should be recorded, although best practice is to record no personal information. For example, the minutes could refer to "an Applicant", "a Complainant", "a Rate payer", "a Tax payer" or could use the initials of the person it is discussing.
- If personal information is included in minutes, then before posting to its website, the best practice is to redact that personal information.
- To help the public determine what personal information they provide to a local authority, notice should be provided to the public about how personal information may be included as part of public council or committee agenda meetings, or that it may be published it to its website. Such notice is in accordance with subsection 25(2) of LA FOIP.

([Investigation Report 282-2018](#) at paragraph [42])

[40] In this case, the RM has not demonstrated its authority to collect or disclose the personal information in question, so instead of just masking it in the minutes and agendas, I recommend the RM ensure the Hamlet Board amends the minutes and agendas to remove

the Complainant's personal information from all versions including those available via public inspection and on the RM's website.

[41] Given that I have found that the collection and disclosure of personal information was not authorized by LA FOIP, I wish to highlight for the RM section 23.1 of LA FOIP which provides for the duty of the local authority to protect personal information:

23.1 Subject to the regulations, a local authority shall establish policies and procedures to maintain administrative, technical and physical safeguards that:

(a) protect the integrity, accuracy and confidentiality of the personal information in its possession or under its control;

(b) protect against any reasonably anticipated:

(i) threat or hazard to the security or integrity of the personal information in its possession or under its control;

(ii) loss of the personal information in its possession or under its control; or

(iii) unauthorized access to or use, disclosure or modification of the personal information in its possession or under its control; and

(c) otherwise ensure compliance with this Act by its employees.

[42] In order to prevent future privacy breaches, the RM is obligated to ensure it has adequate safeguards in place including ensuring necessary training along with written policies and procedures.

[43] In [Investigation Report 166-2021](#), my office recommended the RM develop and implement a number of different policies, including a privacy policy that addresses collection, use, disclosure and safeguarding of personal information, as well as privacy training. The RM advised it would consider developing and implementing the various recommendations. Based on a telephone conversation with the RM it is my understanding that at the time this Investigation Report was issued none of the recommended policies had been developed or implemented. I would like to take this opportunity to reiterate to the RM that a policy for the appropriate management of personal information in compliance with LA FOIP is needed.

[44] I recommend the RM develop and implement a policy for managing personal information immediately. The policy should ensure that the RM has appropriate authority for the collection, use and disclosure of personal information and has considered the need-to-know and data minimization principles. The policy should also include the best practices I discussed previously, at paragraph 40.

[45] I recommend the RM implement an annual access and privacy training program for all RM staff, the members of the RM council and the members of its Organized Hamlet boards.

4. Did the RM appropriately respond to the Complainant's privacy breach complaint?

[46] When an individual has a concern that their personal information may have been inappropriately collected, used or disclosed by a local authority, they have the right to submit a complaint to the local authority. The local authority should then respond to the individual within a reasonable timeframe. As noted in my office's [Investigation Report 349-2017](#) at paragraph [7], best practice would be to respond to an individual within 30 days of receiving the complaint.

[47] In this case, the individual submitted a complaint to the RM and after 30 days the Complainant still had not received a response. My office attempted to follow up with the RM to see when the Complainant could expect a response. The RM would not commit to a timeline, so my office proceeded with an investigation. As of the date of the issuance of this report, it is my understanding that the Complainant has still not received a response from the RM regarding their privacy breach complaint.

[48] In the RM's response to my office, it took the position that a privacy breach had not occurred. If a local authority's determination is no breach occurred, it should still respond to a complainant and explain how it reached its conclusion.

[49] I find that the RM did not appropriately respond to the Complainant's privacy breach complaint.

[50] Therefore, as previously recommended in my office's [Investigation Report 166-2021](#), I recommend the RM develop and implement a policy or procedure for responding to privacy breaches. This should include measures to contain a privacy breach, what parties should be notified of the privacy breach, and the elements to include in notification to affected individuals. As well as steps to take when investigating an alleged privacy breach and consideration of preventative measures. The policy or procedures should also identify who the Privacy Officer is for the RM and direct the RM staff, members of the RM council and members of its Organized Hamlet boards to report privacy breach incidents to the Privacy Officer.

III FINDINGS

[51] I find that I have jurisdiction to investigate this matter.

[52] I find that the Complainant's personal information is involved and that LA FOIP is engaged.

[53] I find that the RM has not demonstrated that there was authority for the Hamlet board to collect the Complainant's personal information.

[54] I find that the RM has not demonstrated that there was authority for the Hamlet board to disclose the Complainant's personal information which is recorded in its agendas and minutes available for public inspection and on the RM's website.

[55] I find that a privacy breach has occurred.

[56] I find that the RM did not appropriately respond to the Complainant's privacy breach complaint.

IV RECOMMENDATIONS

- [57] I recommend the RM ensure the Hamlet board amends the minutes and agendas to remove the Complainant's personal information from all versions including those available for public inspection and on the RM's website.
- [58] I recommend the RM implement an annual access and privacy training program for all RM staff, the members of the RM council and the members of its Organized Hamlet boards.
- [59] I recommend that the RM develop and implement a policy for managing personal information. The policy should ensure that the RM has appropriate authority for the collection, use and disclosure of the personal information involved and has considered the need-to-know and data minimization principles. The policy should also include the best practices I have referenced in paragraph [39].
- [60] I recommend the RM develop and implement a policy or procedure for responding to privacy breaches. This should include measures to contain a privacy breach, what parties should be notified of the privacy breach, and the elements to include in notification to affected individuals. As well as steps to take to investigate a privacy breach and consideration of preventative measures. The policy or procedures should also identify who the Privacy Officer is for the RM and direct the RM staff, members of the RM council and members of its Organized Hamlet boards to report privacy breach incidents to the Privacy Officer.

Dated at Regina, in the Province of Saskatchewan, this 20th day of June, 2022.

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