



INVESTIGATION REPORT 059-2018

Town of Fort Qu'Appelle

June 1, 2018

Summary:

The Office of the Information and Privacy Commissioner (IPC) received a complaint alleging that the Town of Fort Qu'Appelle (Fort Qu'Appelle) breached the privacy of an individual by disclosing the individual's personal information contained in a petition. Upon investigation, the Commissioner found that Fort Qu'Appelle had authority to disclose the personal information in the petition pursuant to subsection 28(2)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner recommended Fort Qu'Appelle develop a policy or procedure specific to disclosures of personal information in petitions and post the policy or procedure to its website.

I BACKGROUND

- [1] On March 22, 2018, my office received a complaint from an individual that the Town of Fort Qu'Appelle (Fort Qu'Appelle) disclosed the Complainant's personal information when it released a petition.
- [2] The Complainant first raised privacy concerns with Fort Qu'Appelle on February 27, 2018. In a letter dated March 24, 2018, Fort Qu'Appelle responded to the Complainant providing its authority to release the petition. Fort Qu'Appelle indicated that it had authority to release under subsection 28(2)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [3] On March 27, 2018, my office provided notification to both Fort Qu'Appelle and the Complainant advising that my office would be conducting a privacy breach investigation

pursuant to section 32 of LA FOIP. My office requested that Fort Qu'Appelle provide a copy of its internal privacy breach investigation report. It was received in my office on April 17, 2018.

II DISCUSSION OF THE ISSUES

1. Do I have Jurisdiction?

[4] Fort Qu'Appelle is a "local authority" pursuant to subsection 2(f)(i) of LA FOIP. Thus, I have jurisdiction to conduct this investigation.

2. Is there personal information involved?

[5] Our customary analysis when dealing with a complaint under Part IV of LA FOIP is first to determine whether there is "personal information" involved. In order for the privacy provisions under LA FOIP to be engaged, the data elements at issue must constitute personal information.

[6] Based on what has been provided to my office, the Complainant takes issue with Fort Qu'Appelle having disclosed the Complainant's name, address, signature and, by having signed the petition, the Complainant's opinion. However, Fort Qu'Appelle redacted the street address of each individual who signed the petition prior to releasing it. Therefore, the data elements at issue are the:

- Name of the Complainant;
- Complainant's signature; and
- Complainant's opinion.

[7] Subsection 23(1) of LA FOIP defines what qualifies as personal information. Specifically, subsections 23(1)(f) and (k)(i) of LA FOIP provide:

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

- ...
- (f) the personal opinions or views of the individual except where they are about another individual;
- ...
- (k) the name of the individual where:
 - (i) it appears with other personal information that relates to the individual;
- ...

[8] Whether a signature is personal information is dependent on context and circumstances. I have previously found that signatures, provided in a work-related capacity, do not constitute personal information. However, signatures may be personal information if made outside of a professional context (see Review Reports LA-2014-002 and 156-2015). In this case, the signature of the Complainant was provided outside of the professional context. Therefore, I find that the Complainant's signature qualifies as personal information pursuant to subsection 23(1)(k)(i) of LA FOIP.

[9] By signing a petition, individuals are indicating that they agree with the petition. This expresses an opinion or view. The Complainant signed the petition. Therefore, I find that the Complainant's opinion or view would qualify as personal information pursuant to subsection 23(1)(f) of LA FOIP. This finding is consistent with Review Report 156-2015. In that case, I found that by signing a petition, individuals were expressing an opinion or view and this constituted personal information.

[10] The name of an individual, when combined with other information of a personal nature, qualifies as personal information pursuant to subsection 23(1)(k)(i) of LA FOIP. In this case, the name is present with other data found above to be personal information. Therefore, the Complainant's name also qualifies as personal information pursuant to subsection 23(1)(k)(i) of LA FOIP.

3. Did Fort Qu'Appelle have authority to disclose the Complainant's personal information?

[11] Once personal information is established, the next step is to consider which of the three primary privacy activities is engaged, i.e. collection, use and/or disclosure. Finally,

authority for the privacy activity would need to be established. Where there is no authority for a collection, use or disclosure of personal information, a privacy breach has occurred.

[12] An individual requested a copy of the completed petition containing the Complainant's personal information and Fort Qu'Appelle released a redacted version. The Complainant takes issue with this release.

[13] *Disclosure* is the sharing of personal information with a separate entity, not a division or branch of the local authority in possession or control of that information.

[14] Therefore, the privacy activity at issue is Fort Qu'Appelle "disclosing" the Complainant's personal information.

[15] Fort Qu'Appelle asserted that it had authority under subsection 28(2)(a) of LA FOIP to disclose the petition containing the Complainant's personal information. Subsection 28(2)(a) of LA FOIP 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:

(a) for the purpose for which the information was obtained or compiled by the local authority or for a use that is consistent with that purpose;

...

[16] In its investigation report provided to my office, Fort Qu'Appelle indicated that the petition was for a financial audit. It was titled, *Petition for Financial Audit of Disposition of Municipal Lands*. The purpose was outlined in the petition:

We the undersigned, being voters of the Municipality of Fort Qu'Appelle do hereby petition the Council of the Municipality to have a financial audit completed to determine whether any land transactions completed for other than fair market value between January 1, 2007 and December 31, 2016, including but not limited to transactions with Abaco Energy Services Ltd. were completed in compliance with applicable laws and process, including but not limited to environmental legislation, public notice requirements for land sales and/or requirements for resolution by council for land sales and procedures relating to conflicts of interest of councillors.

[17] In its letter to the Complainant dated March 24, 2018, Fort Qu'Appelle indicated that the petition was presented to Council under section 140.1 of *The Municipalities Act*. This section provides in part:

140.1(1) In this section:

(a) “**financial audit**” means an audit to identify:

(i) any instances of fraud, theft or other misappropriation of funds;

(ii) any improper or unauthorized transactions; or

(iii) any non-compliance with this Act, any other Act or any bylaw of the municipality;

...

(2) The voters of a municipality may petition the council to require the council to undertake a financial audit or management audit of:

(a) the municipality;

(b) any council committee or other body established by the council; or

(c) any controlled corporation.

(3) If the administrator reports to the council that a petition is sufficient, the council shall:

(a) at its next meeting, pass a resolution to engage the services of an auditor who meets the requirements of subsection (9) to conduct the financial audit or management audit as the case may be;

(b) cause the financial audit or management audit to be conducted within 180 days after the receipt by the council of the petition requesting the financial audit or management audit;

(c) determine with the auditor the audit required to address the matters set out in the petition; and

(d) fully cooperate with the auditor during the audit.

(4) For the purposes of this section, a petition is sufficient if it is signed by the number of voters equal to one-third of the population of the municipality.

[18] In order to rely on subsection 28(2)(a) of LA FOIP, “purpose” and “consistent purpose” are important concepts to understand. Service Alberta’s *FOIP Guidelines and Practices (2009)* at page 260, states the following:

The *purpose* means the purpose for which the information was collected... A public body can use the information for that purpose. Typical purposes include the

administration of a particular program, the delivery of a service and other directly related activities.

...

A *consistent purpose* is one that has a direct and reasonable connection to the original purpose and that is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses the information...

- [19] The former federal Privacy Commissioner has similarly stated in *Expectations: A Guide for Submitting Privacy Impact Assessments to the Office of the Privacy Commissioner of Canada* at page 9, that "...For a use or disclosure to be consistent, it must have a reasonable and direct connection to the original purpose for which it was obtained or compiled."
- [20] Fort Qu'Appelle cited Review Report 156-2015 in support of its authority to disclose the petition. In that Report, I considered a similar situation. An applicant had requested a copy of a petition from the Rural Municipality of Keys (R.M.). The R.M. provided a copy but redacted the names, signatures and legal land description of 42 ratepayers citing subsection 28(1) of LA FOIP as reason to withhold. I found that the R.M. should release the information in the petition pursuant to subsection 28(2)(a) of LA FOIP. In making that finding, I stated that "individuals who signed this petition did so to let the R.M. know that it supported the views expressed on the petition. The R.M. obtained the petition for the purpose of assessing the level of support and making a decision. The decision making process of a local authority should be open which would include petitions being made publicly available to the public."
- [21] Each case must be evaluated on its own merits. My office reviewed the circumstances of the petition in Review Report 156-2015 and found it to be similar to the one in this case. It was a petition presented to the R.M. Council. Further, the petition was binding which required Council to take certain steps such as verifying names and addresses of the signatories.
- [22] Petitions are not intended to be kept secret. Particularly when subsection 134(1) of *The Municipalities Act* states the "administrator is responsible for determining if a petition for a referendum is sufficient." Transparency in such a process is important. The British Columbia *FOIPPA Policy and Procedures Manual* states:

The names of individuals signing a petition are not normally supplied in confidence. Petitions are generally considered to be public information; individuals signing a petition are publicly lending their support to a position and expect that their names may be disclosed. There may be some cases, however, in which the circumstances surrounding the collection of the signatures on a petition indicate that the individuals have signed with the understanding that their names will not be disclosed.

[23] I agree with this approach. There was nothing in this case to suggest that when the individuals signed the petition they were signing with an understanding their names would not be disclosed. Therefore, I find that Fort Qu'Appelle had authority to disclose the petition containing the Complainant's personal information pursuant to subsection 28(2)(a) of LA FOIP.

[24] The primary purpose for legislation such as LA FOIP is to facilitate greater transparency and accountability of local government. With this in mind, Fort Qu'Appelle should develop a policy or procedure that addresses the petition process and post it to Fort Qu'Appelle's website pursuant to subsection 53.1(1)(a) of LA FOIP. Section 53.1 of LA FOIP provides:

53.1(1) Every local authority shall make reasonable efforts to:

(a) make available on its website all manuals, policies, guidelines or procedures that are used in decision-making processes that affect the public by employees of the local authority in administering or carrying out programs or activities of the local authority; or

(b) provide those documents when requested in electronic or paper form.

(2) Any information in a record that a head would be authorized to refuse to give access to pursuant to this Act or the regulations may be excluded from manuals, policies, guidelines or procedures that are made available or provided pursuant to subsection (1).

[25] A policy or procedure allows citizens to be better informed as to how their personal information will be handled throughout a petition process. This way, citizens may know in advance in what instances their personal information may become publicly available and then decide whether or not they wish to participate.

IV FINDING

[26] I find that Fort Qu'Appelle had authority to disclose the petition containing the Complainant's personal information pursuant to subsection 28(2)(a) of LA FOIP.

V RECOMMENDATION

[27] I recommend that Fort Qu'Appelle develop a policy or procedure specific to disclosures of personal information in petitions and post the policy or procedure to its website.

Dated at Regina, in the Province of Saskatchewan, this 1st day of June, 2018.

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