



Office of the
Saskatchewan Information
and Privacy Commissioner

April 22, 2021

Mr. Terry Dennis
Chair of the Standing Committee on
Crown and Central Agencies
Room 7, Legislative Building,
2405 Legislative Drive,
Regina, SK, Canada, S4S 0B3

Email: committees@legassembly.sk.ca

Dear Mr. Dennis:

Re: Bill 17 - *The Traffic Safety (Miscellaneous) Amendment Act, 2020*

Thank you for your letter dated April 16, 2021. Please find attached my submission regarding Bill 17. Please be advised once this is tabled with your Committee, I will post this on my office's website. As of that time, it will be a public document.

Yours truly,

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

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April 22, 2021

Submission to the Standing Committee on Crown and Central Agencies Legislative Assembly of Saskatchewan

I note that Bill 17, *The Traffic Safety (Miscellaneous) Amendment Act, 2020* has received second reading on April 20, 2021. I would ask the Standing Committee on Crown and Central Agencies (the Committee) to consider my concerns regarding section 35 of Bill 17. I outlined my concerns in greater detail below.

A. Section 35 Data-Linking Activities

Section 35, PART XVIII.I, section 276.1 of Bill 17 defines:

- “data linking”, “data-linking activity”, “dataset”, “government institution”, “integrated service”, “partner”, “partner agency”, “personal identity information”, “personal identity manager”, “personal identity service”, “personal information” and “specialized service” for the purpose of authorizing and regulating the electronic exchange of information between the administrator and authorized parties upon the customer’s consent.

- Creates regulatory authority for the purpose of authorizing and regulating the electronic exchange of information between the administrator and authorized parties upon the customer’s consent.

The full text of section 35 is attached.

The proposed section 35 appears to create the authority to exchange electronic information. This approach is referred to as data linking or data matching. It is specific to the administrator and other authorized parties.

I note the Legislative Assembly for Saskatchewan passed *The Data Matching Agreements Act* and it was given Royal Assent on May 9, 2018. This Bill was introduced in the Legislative Assembly by the Minister of Justice. The Act has not yet been proclaimed. You can find Chapter D-1.3 [here](#).

Considerable work went into developing this Act by staff of the Ministry of Justice and my office. I believe this Act facilitated data matching in a balanced and transparent way. The Act

would have dealt with, among other situations, the situation contemplated by section 35 of Bill 17.

After the passing of *The Data Matching Agreements Act*, I know work was done by the Ministry of Justice on *Regulations* that would accompany the Act when proclaimed. My office has also been involved with the Ministry of Justice on guidance documents for those that would be involved in such projects.

The Data Matching Agreements Act would address all situations where it was considered necessary to achieve data matching. I am concerned that if government organizations each believe they need their own section in their own Act, which authorizes electronic exchanges (data matching), that we could end up with different processes and different rules for electronic exchanges instead of one approach that works for all. Does this mean that organizations like the Ministry of Health, eHealth, the Saskatchewan Health Authority, the Ministry of Education, the Ministry of Social Services, City of Regina, City of Saskatoon, University of Regina, University of Saskatchewan, SaskPower and SaskEnergy will all be requesting the Legislative Assembly for similar legislation?

I would request the Committee recommend removing section 35 from Bill 17. The fact that SGI considered that they needed such authorization as in section 35, suggests to me there is a need for data matching in the province of Saskatchewan. This need could be addressed by proclaiming *The Data Matching Agreements Act* and *Regulations*.

I would ask the Committee encourage the Minister of Justice and the Government of Saskatchewan to now proclaim *The Data Matching Agreements Act* and *Regulations*.

B. Section 35 Integrated Services

Also in section 35 of Bill 17, “integrated service” is defined as:

(e) ‘integrated service’ means an integrated service prescribed pursuant to section 276.2;

“Integrated service”

276.2 The Lieutenant Governor in Council may make regulations respecting an integrated service, including by prescribing the following:

- (a) the purpose of the integrated service;
- (b) each service that may be provided as a part of the integrated service;
- (c) each program or activity of the administrator necessary for the provision of the integrated service;

- (d) each partner agency that is a partner in the provision of the integrated service;
- (e) the types of personal information that may be collected, used or disclosed by a partner for the purpose of providing the integrated service;
- (f) the terms and conditions that must be included in an agreement between the partners with respect to their collaborative provision of the integrated service;
- (g) if consent from an individual is to be required before the integrated service may be provided to them, the manner in which consent must be given and may be withdrawn.

Section 17.1 of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations) recognizes “common or integrated services”. Section 17.1 provides:

Disclosure of personal information to a party to an information sharing agreement

17.1(1) In this section:

(a) “**common or integrated service**” means a program or activity designed to benefit the health, safety, welfare or social well-being of an individual that is delivered by a government institution and one or more of the following:

- (i) another government institution;
- (ii) a local authority;
- (iii) a trustee as defined in The Health Information Protection Act;
- (iv) a First Nation;
- (v) a police service or regional police service as defined in The Police Act, 1990;
- (vi) the Royal Canadian Mounted Police;
- (vii) a non-profit organization that provides a service of the type to be included in the common or integrated service;
- (viii) any other agency or organization that the minister determines is appropriate;

A similar section exists in *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) section 10.1 (attached) and in *The Health Information Protection Regulations* (HIPA Regulations) section 5.2 (attached).

Section 17.1 of the FOIP Regulations contemplates a “common or integrated service”. There is already legislation that permits common integrated services. At the time, considerable work was done to ensure that common integrated services would work well. As above, I am concerned about multiple statutes having different definitions, processes and rules to create integrated services. Since the implementation of section 17.1 of the FOIP Regulations, I have not personally heard of any difficulties applying or using section 17.1. I am also unclear as to what if any role Saskatchewan Government Insurance (SGI) would have to play in the roll out of such a program and why it sees these amendments are necessary.

I would request that your committee recommend removing the portions related to integrated services from section 35 of Bill 17.

C. Section 35 Personal Identity and Specialized Services

I note in section 35, new definitions are introduced as follows:

“Definitions for Part

276.1 In this Part:

...

(j) **‘personal identity service’** means a personal identity service prescribed pursuant to section 276.3;

...

(l) **‘specialized service’** means an integrated service or a personal identity service.

I note the above language is not found in FOIP, LA FOIP, HIPA or *The Data Matching Agreements Act*, so would appear to be proposing again something new.

Section 35 also provides:

276.3(1) The Lieutenant Governor in Council may make regulations respecting a personal identity service, including by prescribing the following:

- (a) subject to subsection (2), each service that may be provided as a part of the personal identity service;
- (b) each program or activity of the administrator in the provision of the personal identity service;
- (c) each program or activity of a partner agency that is a partner in the provision of the personal identity service;
- (d) the types of personal information that may be collected, used or disclosed by a partner for the purpose of providing the personal identity service;

(e) the terms and conditions that must be included in an agreement between the personal identity manager and the partners with respect to the provision of the personal identity service;

(f) if consent from an individual is required before the personal identity service is provided to that individual, the manner in which consent must be given and may be withdrawn.

(2) A personal identity service approved pursuant to subsection (1) may include only the following types of services:

(a) validation of an individual's driver's licence;

(b) verification of the personal identity information associated with an individual's driver's licence;

(c) a service prescribed as a type of service that may be provided as part of a personal identity service.

I note this appears to be the creation of a service that might involve partners and involve data linking or data matching. Section 17.1 of the FOIP Regulations contemplates a "common or integrated service". As indicated above, I would like to suggest there is already legislation that permits common or integrated services. I am concerned about multiple statutes having different definitions and processes to create integrated services or the apparent creation of a new regime involving personal identity services without first consulting my office on what has obvious privacy implications.

For the same reasons as noted above, I would request the Committee recommend the provisions regarding personal identity service be removed from section 35 of Bill 17.

Thank you for considering my requests to prevent multiple version of legislation for data linking and integrated services. My hope is that we have one piece of legislation that addresses the various needs in our province.

All of which is respectfully submitted,



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

New Part XVIII.1

35 The following Part is added after Part XVIII:

“PART XVIII.1 Data-Linking Activities

“Definitions for Part

276.1 In this Part:

- (a) ‘data linking’ means the comparing of personal information contained in a dataset with personal information contained in another dataset for a purpose other than the purpose for which the personal information in each dataset was collected;
- (b) ‘data-linking activity’ means a data-linking activity approved pursuant to this Part;
- (c) ‘dataset’ means a grouping of data in which all or most of the data:
 - (i) is held by the administrator;
 - (ii) consists of facts;
 - (iii) is not the product of analysis or interpretation;
 - (iv) is not a document mentioned in section 8 of The Archives and Public Records Management Act; and
 - (v) has not, except for its grouping, been organized, adapted or modified;
- (d) ‘government institution’ has the same meaning as in The Freedom of Information and Protection of Privacy Act;
- (e) ‘integrated service’ means an integrated service prescribed pursuant to section 276.2;
- (f) ‘partner’, with respect to a specialized service or a data-linking activity, means the administrator or each partner agency that is prescribed as a partner in the provision of the specialized service or the carrying out of the data-linking activity;
- (g) ‘partner agency’ means a prescribed agency;
- (h) ‘personal identity information’ means personal information that may be collected, used or disclosed by a partner for the purpose of providing the personal identity service;
- (i) ‘personal identity manager’ means the administrator;

The Local Authority Freedom of Information and Protection of Privacy Regulations (LA FOIP Regulations) section 10.1

Disclosure re common or integrated service

10.1(1) For the purposes of clause 28(2)(s) of the Act, personal information may be disclosed in accordance with an information sharing agreement entered into pursuant to The Freedom of Information and Protection of Privacy Regulations or The Health Information Protection Regulations to a party involved in delivering a common or integrated service as defined in those regulations for the purposes of assessing, planning or delivering the common or integrated service.

(2) Notwithstanding section 11, consent to the use and disclosure of personal information for the purposes of receiving a common or integrated service mentioned in subsection (1) is not required to be in writing if:

(a) the individual providing consent is informed of the anticipated uses and disclosures of the individual's personal information; and

(b) either:

(i) the person who obtains the consent records the following information and signs the record:

(A) the date that consent was obtained;

(B) the manner by which consent was obtained, whether the consent was obtained in person, by way of telephone or otherwise;

(C) the anticipated uses and disclosures of personal information with respect to which the individual provided consent;

(D) any restrictions on the consent that the individual provided; or

(ii) consent to the disclosure was obtained pursuant to any other Act or regulation that does not require the consent to be in writing.

The Health Information Protection Regulations (HIPA Regulations) section 5.2

Disclosure of personal health information to a party to an information sharing agreement

5.2(1) In this section:

(a) "common or integrated service" means a program or activity designed to benefit the health, safety, welfare or social well-being of an individual that is delivered by a government institution and one or more of the following:

(i) another government institution;

(ii) a local authority;

(iii) a trustee as defined in The Health Information Protection Act;

(iv) a First Nation;

(v) a police service or regional police service as defined in The Police Act, 1990;

(vi) the Royal Canadian Mounted Police;

(vii) a non-profit organization that provides a service of the type to be included in the common or integrated service; (viii) any other agency or organization that the minister determines is appropriate.

(b) “information sharing agreement” means an agreement that governs the collection, use and disclosure of personal health information by the parties involved in the provision of a common or integrated service and that meets the requirements of subsection (2).

(2) An information sharing agreement must contain the following:

- (a) a description of the common or integrated service to be provided;
- (b) a description of the purposes or expected outcomes of the common or integrated service;
- (c) provisions setting out the obligations of a party respecting the security and safeguarding of personal health information received by that party;
- (d) provisions that prohibit the subsequent use and disclosure of the personal health information for purposes not related to the common or integrated service except:
 - (i) with the consent of the person to whom the information relates; or
 - (ii) if required or authorized by law;
- (e) provisions for the withdrawal of a party and, in the case of a withdrawal, provisions that:
 - (i) prohibit any further use or disclosure of the personal health information received by that party except:
 - (A) with the consent of the person to whom the information relates; or
 - (B) if required or authorized by law; and
 - (ii) specify the ongoing obligations of that party to secure and safeguard the personal health information;
- (f) provisions for the termination of the information sharing agreement and, in the case of a termination, provisions that:
 - (i) prohibit any further use or disclosure of the personal health information received by the parties except:
 - (A) with the consent of the person to whom the information relates; or
 - (B) if required or authorized by law; and
 - (ii) specify the ongoing obligations of the parties to secure and safeguard the personal health information;
- (g) any other provisions that the minister considers necessary.

(3) For the purposes of clause 27(4)(p) of the Act, personal health information may be disclosed to a party to an information sharing agreement entered into for the purposes of providing a common or integrated service:

- (a) if that information is disclosed in accordance with the agreement for any or all of the following purposes:
 - (i) determining the eligibility of an individual to receive the common or integrated service;
 - (ii) assessing and planning the common or integrated service and delivering that service to an individual or that individual’s family; or

(b) if consent to the disclosure was obtained pursuant to any other Act or regulation that does not require the consent to be in writing.

(4) If the Royal Canadian Mounted Police participates in providing a common or integrated service, the requirements of subsection (3) are met if the Royal Canadian Mounted Police enters into a single arrangement in writing with a government institution that is involved in the provision of the common or integrated service, under which the Royal Canadian Mounted Police signifies that it will comply with the terms governing the collection, use and disclosure of personal information contained in the information sharing agreement applicable to the common or integrated service in which the Royal Canadian Mounted Police participates.