



Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 092-2015 to 095-2015

Oliver Lodge
Saskatoon Regional Health Authority
Ministry of Health
Office of the Premier

August 17, 2015

Summary:

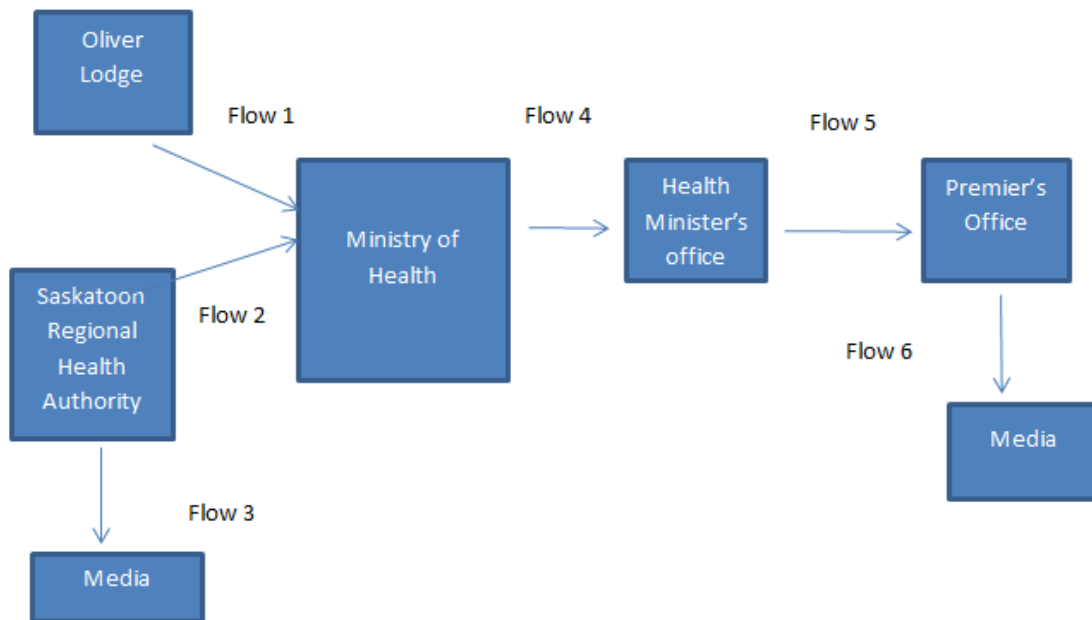
A care aide worker attended the Legislative Assembly and raised concerns on the quality of care for seniors. The Premier publicly provided assurances to the care aide worker that neither he nor health care workers would face retribution for speaking out about concerns on the quality of care for seniors in the Legislative Assembly. A few weeks later, it became public that the care aide had been suspended. The Opposition asserted that the Premier's Office had leaked information publicly about the care aide. The care aide appealed to the Information and Privacy Commissioner (IPC) about the disclosure of his personal information. In the areas where he had jurisdiction, the IPC found that most of the collection, use and disclosure of personal information were not authorized by *The Freedom of Information and Protection of Privacy Act* (FOIP) and *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). However, in one instance, the IPC found that the Saskatoon Regional Health Authority (SRHA) had authority under LA FOIP to disclose personal information in the public interest. He also found that he did not have jurisdiction to make findings in some areas where there were transactions of the care aide's personal information. The IPC made a number of recommendations including each responsible agency within his jurisdiction offer an apology to the care aide, and that privacy protection of personal information be extended to offices of members of the Legislative Assembly or to members of Executive Council by amendments to FOIP, the development of a code of conduct for members of the Legislative Assembly, and/or the Government of Saskatchewan updating its *Overarching Personal Information Privacy Framework*.

I BACKGROUND

- [1] On March 30, 2015, a care aide worker from Oliver Lodge attended the Saskatchewan Legislature to seek assurance from the Premier that he would not face retribution for raising his concerns about care of seniors in care facilities. The Premier assured the care aide that neither he, nor health care workers, will face retribution for speaking out about concerns on the quality of care for seniors.
- [2] During question period on April 21, 2015, the Opposition asserted that the Premier's Chief of Operations and Communications leaked information publicly about the care aide. The Opposition asserted that the care aide was suspended for speaking out and raising concerns about the quality of care for vulnerable seniors.
- [3] On April 23, 2015, my office received an email from the care aide expressing concerns over how his employment information was disclosed by the Premier's Chief of Communications and Operations to members of the Legislative Press Gallery and other media.
- [4] My office determined that it would be necessary to include all the organizations involved in the exchange of information in its investigation in order to fully understand what occurred. Therefore, on April 29, 2015, my office notified Oliver Lodge, the Saskatoon Regional Health Authority (SRHA), the Ministry of Health (Health), and Executive Council that it would be undertaking an investigation pursuant to section 33 of *The Freedom of Information and Protection of Privacy Act* (FOIP) and pursuant to section 32 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). My office requested internal investigation reports and relevant information and documents from each organization, and all were cooperative with my office's investigation. My office also notified the care aide of the investigation.
- [5] Further, due to the seriousness of the complaint, my office's opinion was that it required independent advice on its investigation and conclusions. Thus, my office retained the services of Gerald L. Gerrand, Q.C. to advise and consult on my office's process, investigation, findings, and recommendations.

II DISCUSSION OF THE ISSUES

[6] Below is a flow chart that depicts the flow of the information at issue. This flow chart is based on the materials provided to my office by the four organizations described at [4].



[7] Each flow of information depicted in the chart above will be discussed in this Investigation Report.

Flow #1 – Information from Oliver Lodge to Health

[8] Before I begin discussion about this particular flow of information, I should note that Oliver Lodge is a local authority as defined by subsection 2(f)(xiii) of LA FOIP. It is also considered a health care organization as defined by subsections 2(1)(a) and 2(1)(h) of *The Regional Health Services Act* (RHSA).

[9] Health is a government institution as defined by subsection 2(1)(d)(i) of FOIP.

[10] On April 20, 2015, Health requested via email information on certain “serious incidents” that are under investigation at Oliver Lodge. On the same day, Oliver Lodge disclosed information by email to Health. The email included the number of issues under investigation and details regarding some of the complaints.

[11] First, I will analyze whether personal information is involved. Second, I will determine if Oliver Lodge had authority to disclose the information. Third, I will determine if Health had authority to collect the information.

a. Is personal information involved?

[12] Subsection 24(1)(b) of FOIP defines “personal information” as follows:

24(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:

...

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

[13] Similarly, subsection 23(1)(b) of LA FOIP defines “personal information” as follows:

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:

...

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

[14] Information about the complaints that led to the employee being suspended with pay would qualify as employment history. Therefore, I find that the information at issue would qualify as personal information pursuant to subsection 24(1)(b) of FOIP and subsection 23(1)(b) of LA FOIP.

b. Did Oliver Lodge have authority to disclose personal information to Health?

[15] Second, I need to determine if Oliver Lodge disclosed personal information in accordance with LA FOIP. I will review the issues related to Oliver Lodge's disclosure of personal information below.

i. Subsection 28(2)(i) of LA FOIP

[16] Oliver Lodge's investigation report asserts that the disclosure of the personal information was in accordance with subsection 28(2)(i) of LA FOIP, which 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:

...

(i) for the purpose of complying with:

(i) an Act or a regulation;

[17] In its submissions to my office, Oliver Lodge cited sections of RHSA which it asserts authorized the disclosure of the care aide's personal information, including:

27(2) In carrying out its responsibilities pursuant to subsection (1), a regional health authority shall:

...

(g) do any other things that the minister may direct.

...

38(1) A health care organization shall:

(a) co-operate with the minister and the regional health authority in whose region the health care organization is located to achieve provincial and regional goals and objectives for health services set by the minister and the regional health authority;

(b) conduct its activities and affairs in a manner that is consistent with, and that reflects, the health goals and objectives established by the minister and the regional health authority in whose region the health care organization is located;

(c) with respect to health services for which it is given funding by the regional health authority, provide those health services in accordance with the agreement required by section 33.1 or 34.1; and

(d) comply with this Act and the regulations.

- (2) A health care organization shall not provide health services that are inconsistent with the operational plan of the regional health authority in whose region the health care organization is located.

[18] Subsection 27(2) of the RHSA applies to regional health authorities. Since Oliver Lodge is not a regional health authority, I will not consider that particular subsection further.

[19] Section 38 of the RHSA ensures that health care organizations, such as Oliver Lodge, are operating consistently with goals and objectives set by the Minister of Health and the regional health authority in whose region they are located. In a telephone discussion with Oliver Lodge on June 8, 2015, a representative of Oliver Lodge explained to my office that the Community Care Branch (CCB) of Health provides oversight for special care homes. Therefore, CCB would need to ask questions of Oliver Lodge to make sure that certain aims or goals are being achieved.

[20] I agree that section 38 of the RHSA would require Oliver Lodge to share certain information with Health. However, section 38 does not obligate Oliver Lodge to share any and all information that is requested of it. In this case, the request for information was about allegations involving the care aide that are being investigated. When I review the initial material provided to my office, including the email records where Health requested information from Oliver Lodge, it is not stated what goal or objective set by the Minister of Health or relevant regional health authority was being examined.

[21] However, in comments provided to my office on July 28, 2015, Oliver Lodge clarified that the goals and objectives set by the Minister of Health was the quality of seniors care and upholding whistleblower protection. It stated that due to the longstanding and ongoing relationship between Oliver Lodge and Health, the goals and objectives are implicitly understood between Oliver Lodge and Health.

[22] Even if there is an implicit understanding between Oliver Lodge and Health, there seems to have been a misunderstanding between Oliver Lodge and Health in this case. In a matter of a couple of hours, the care aide's personal information that was disclosed by Oliver Lodge had flowed to the Premier's office and was disclosed to the media.

[23] I appreciate that at the time of the request for information from Health, Oliver Lodge could have been under the impression that the request for information was for the purposes of achieving goals or objectives set forth by the Minister of Health. I note that Oliver Lodge's internal investigation report stated that Oliver Lodge sought advice from SRHA and from Health prior to disclosing the care aide's personal information. Oliver Lodge asserts it received verbal assurance from Health that the care aide's personal information would not be publicly shared. Therefore, it provided the information in confidence to Health.

[24] I find that Oliver Lodge did not have authority pursuant to subsection 28(2)(i) of LA FOIP and section 38 of the RHSA to disclose the care aide's personal information.

[25] I recommend that, when it comes to personal information, that Oliver Lodge not rely on any implicit understanding of goals and objectives that is derived from the longstanding and ongoing relationship it has with Health. I recommend that it establish policies and procedures that will guide its staff in knowing when it is appropriate to disclose personal information and when it is not. I encourage all care homes to develop similar policies and procedures.

ii. Subsection 10(g)(i) of LA FOIP Regulations

[26] In its comments to my office on July 28, 2015, Oliver Lodge asserts that subsection 10(g)(i) of the LA FOIP Regulations authorizes disclosure. Subsection 10(g)(i) of LA FOIP Regulations provides as follows:

10 For the purposes of clause 28(2)(s) of the Act, personal information may be disclosed:

...
(g) to any person where the information pertains to:

(i) the performance of any function or duty or the carrying out of any responsibility by an officer or employee of a local authority; or

...

- [27] The submission also states that it did not merely disclose the personal information to “any person” but to the Director of CCB at Health. It says that CCB has specific oversight duties in relation to special care homes such as Oliver Lodge.
- [28] The personal information at issue in this case deals with allegations made against the care aide. At the time of the disclosure, the investigations into the allegations made against the care aide had not been concluded. Investigations into allegations of wrongdoing require some degree of confidentiality lest the investigations be jeopardized and/or the reputation of an individual be unfairly damaged.
- [29] Further, section 26 of LA FOIP requires that local authorities ensure that the personal information it uses is accurate and complete. It provides:
- 26 A local authority shall ensure that personal information being used by the local authority for an administrative purpose is as accurate and complete as is reasonably possible.
- [30] Ensuring accuracy and completeness of personal information is important because that would minimize the possibility of inappropriate information being used to make a decision about the individual. At this point, the only accurate information was that there were allegations.
- [31] By extension, if LA FOIP requires that local authorities ensure accuracy and completeness of personal information before it is used, then local authorities should also ensure accuracy and completeness of personal information before it is disclosed. Efforts need to be made to verify accuracy and completeness of the personal information. The allegations were under investigation at the time of the disclosure. Without the completion of a thorough investigation, the allegations had not yet been verified for accuracy.
- [32] In my view, the personal information that may be disclosed pursuant to subsection 10(g)(i) of LA FOIP Regulations does not include information related to ongoing and incomplete investigations or assertions made against the employee that have not yet been ruled upon in a completed inquiry or procedure.

[33] Oliver Lodge likely could have said that the employee in question has been suspended by reason of matters unrelated to his expressed concerns over patient safety, which were matters not concluded at the time. What Oliver Lodge disclosed was personal information respecting unproven assertions that were the basis of the incomplete proceedings. The latter is not permitted by subsection 10(g)(i) of LAFOIP regulations in my view.

iii. Subsection 28(2)(n) of LA FOIP

[34] In its comments provided to my office on July 28, 2015, Oliver Lodge argues it was in the public interest and that subsection 28(2)(n) of LA FOIP authorized Oliver Lodge's disclosure of personal information to Health.

[35] Later in this Investigation Report, I will discuss the test for subsection 28(2)(n) of LA FOIP in my analysis of the flow of personal information from SRHA to the media. From that analysis, I found that subsection 28(2)(n) of LA FOIP did authorize SRHA's disclosure of personal information. However, I find that subsection 28(2)(n) of LA FOIP did not authorize Oliver Lodge's disclosure of personal information to Health. There is one major distinction between SRHA's disclosure of personal information to media, and Oliver Lodge's disclosure of personal information to Health: the timing of the disclosure.

[36] Oliver Lodge's disclosure of personal information occurred prior to any public debate or public attention about the legitimacy of the employee's suspension. SRHA's disclosure of personal information occurred after the matter was raised in the Legislative Assembly and published in news articles. I find that subsection 28(2)(n) of LA FOIP did not authorize Oliver Lodge's disclosure of personal information.

c. Did Health have authority to collect the care aide's personal information?

[37] Third, I need to determine if Health had authority to collect the care aide's personal information.

[38] Section 25 of FOIP provides that a government institution can collect personal information if it relates to an existing or proposed program or activity of the government institution. If Health was to collect any personal information, then it must do so in accordance with section 25 of FOIP. In its submission, Health asserts that it sets the standards for the operation of special care homes. Therefore, Health can collect personal information if it is related to the operation of special care homes.

[39] The care aide's personal information, in this case, is not related to an existing or proposed program or activity of the government institution. A person's employment history does not implicitly become information about a program or activity of a government institution.

[40] Health asserted that the Minister of Health could have issued a directive pursuant to section 7 of the RHSA or it could have conducted an inquiry pursuant to section 59 of the RHSA if the Premier was not satisfied with the legitimacy of the action taken against the care aide. In other words, if the care aide was suspended because he raised concerns about the quality of seniors' care, then the Premier could have kept his commitment to the care aide worker by having the Minister of Health issue a directive or conduct an inquiry under the RHSA. In this case, no directive was issued and no inquiry was ordered.

[41] So even though the care aide's personal information could have been collected for the purposes of sections 7 or 59 of the RHSA, based on the material provided to me, there is no evidence that information was used for such purposes.

[42] In a letter dated July 28, 2015 to my office, Health submitted that the government has a policy that no health care worker would be disciplined for publicly raising health care concerns. It argued that the Premier publicly announced his position that no health care worker has to worry when they speak up about concerns, which made this a government policy.

[43] Health submits it is accountable for policies set out by the government, including the policy that no health care worker will have to worry when raising concerns about health

care. Health stated the collection of personal information for the purpose of “ensuring accountability of a minister with respect to the actions of his or her ministry, can fall within the meaning and purpose of section 25 of the Act.”

[44] When I consider the above, and what ultimately occurred (the Premier’s office disclosing the care aide’s personal information to the media), I find that the information was not collected by Health for the purpose of ensuring accountability.

[45] I find that Health did not collect the personal information in accordance with section 25 of FOIP.

Flow #2 – Information from SRHA to the Ministry of Health

[46] There are two groupings of communication in Flow #2. The first grouping deals with communications between SRHA and Health between March 30, 2015 and April 17, 2015. The second group deals with communications between SRHA and Health April 20, 2015 and onwards.

[47] Before I begin the discussion on this flow of information, I note that the SRHA is a local authority as defined by subsection 2(f)(xiii) of LA FOIP.

a. Communications between SRHA and Health between March 30, 2015 and April 17, 2015

[48] My office reviewed email records dated between March 30, 2015 and April 17, 2015 received from Health. Most of the emails were between Health employees and detailed telephone calls between SRHA and Health. There was one email from SRHA to Health.

[49] The one email from SRHA to Health was dated April 13, 2015. The email included information about allegations made against the care aide, and the timing of the allegations in relation to the care aide’s visit to the Legislature. In its letter dated August 13, 2015 to my office, SRHA provided context to this April 13, 2015 email and indicated that

Health's Assistant Deputy Minister (ADM) had emailed SRHA's Vice President (VP), Integrated Health Services on April 1st, 2015, April 8, 2015, and April 13, 2015.

[50] When I consider the content of the emails, it seems that the exchanges of information were for the purpose of question period. For example, in one email dated March 30, 2015 (timestamped 5:01pm), Health's Deputy Minister's office advised Health's Labour Relations Unit to copy the Executive Assistant to the Deputy Minister on any issues that it is made aware of that could be raised in question period. Also, in its letter dated August 13, 2015 to my office, SRHA indicated during the time period between March 30, 2015 and April 17, 2015, numerous voicemails were left by Health's ADM for SRHA's VP indicating it only wanted to ensure the Premier's assurances were being upheld, and not to influence the labour relations process.

[51] Similar to my analysis under Flow #1, I find that the information in the emails qualifies as personal information as defined by subsection 24(1)(b) of FOIP and 23(1)(b) of LA FOIP.

[52] Also, similar to my analysis under Flow #1, I find that SRHA did not have authority under LA FOIP to disclose the care aide's personal information to Health. In a letter dated August 13, 2015, SRHA asserted that subsection 10(g)(i) of LA FOIP Regulations authorizes disclosure. As I have stated earlier, unless the investigation into the allegations made against the care aide are concluded, subsection 10(g)(i) of LA FOIP Regulations cannot authorize disclosure. SRHA has the obligation to ensure personal information it discloses is as accurate and complete as possible, and such an obligation cannot be fulfilled until the investigation into the allegations is complete.

[53] Finally, similar to my analysis under Flow #1, I find that Health did not have authority under section 25 of FOIP to collect the care aide's personal information from SRHA.

b. Communications between SRHA and Health from April 20, 2015 and onwards

- [54] There are two groupings of communications. The first issue is how SRHA responded (or did not respond) to a request for information it received from Health. The second issue is the key messages prepared by SRHA and provided to Health.
- [55] I need to determine if personal information was involved in each of these issues. If there is personal information, then I need to determine if it was disclosed by SRHA in accordance with the provisions of LA FOIP.
- [56] Before I proceed, it should be noted that Oliver Lodge is an affiliate and that SRHA provides human resource, safety and wellness, and communication services to Oliver Lodge pursuant to a shared services agreement. Therefore, SRHA would have had information about the care aide in order to provide human resource services to Oliver Lodge.
- [57] First, similar to Flow #1, Health requested information on certain “serious incidents” that are under investigation at Oliver Lodge via email on April 20, 2015. When I review the records provided to my office, SRHA did not respond by email to this request for information. SRHA clarified to my office, in an email dated June 24, 2015, that the Director of Seniors Health and Continuing Care responded to this request for information via telephone. In documents provided to my office on August 4, 2015, SRHA indicated it provided information about Oliver Lodge’s safety reports and general questions about staffing and staffing guidelines. I am advised that the Director asserted she never discussed the care aide and had not even heard about the care aide until after the April 20, 2015 telephone call. When I review all the materials provided to me by the parties in this investigation, the information that was forwarded from Oliver Lodge to Health was the information ultimately released by the Premier’s office. Based on the evidence before me, I find that SRHA did not disclose the care aide’s personal information in response to the email on April 20, 2015.
- [58] Second, on April 20, 2015, key messages were created by SRHA and provided to Health about how no employee is being disciplined for raising concerns about its workplace or care and that it does not discipline employees for speaking to any member of the

Legislative Assembly. A copy of the key messages was provided to my office. When I review these key messages, I find that they do not contain any personal information. Therefore, I find that SRHA did not disclose the care aide's personal information through the key messages.

Flow #3 – Information from SRHA to the media.

[59] On April 23, 2015, the President and CEO of SRHA engaged in a media interview discussing matters involving the care aide. I note the shared services agreement between SRHA and Oliver Lodge states that SRHA provides human resources and communication services for Oliver Lodge. In its submission, SRHA asserts personal information disclosed in the interview was in accordance with subsection 28(2)(n)(i) of LA FOIP. That subsection provides as follows:

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:

...

(n) for any purpose where, in the opinion of the head:

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure;

[60] Having regard to the relevant provisions of LA FOIP, I am of the view that there is a four-part test that must be met before personal information may be disclosed pursuant to subsection 28(2)(n)(i) of LA FOIP.

- a. the information in question must first qualify as “personal information” as defined by subsection 23(1) of LA FOIP,
- b. the personal information must have been disclosed, and an invasion of privacy occurred,
- c. there must be a public interest, and
- d. there must be a public interest that outweighs any invasion of privacy.

[61] First, I find that the information at issue qualifies as “personal information” as it constitutes employment history. Subsection 23(1) of LA FOIP defines personal information about an identifiable individual in any form. SRHA asserts that the President and CEO spoke of the care aide in a de-identified manner. Although the care aide's name is not used, I find that there was enough information provided by the President and CEO to the media to identify the care aide. In its internal investigation report, SRHA admits

that if a person was following the news, it could be determined who the President and CEO of SRHA was referring to. For clarity sake, the personal information that was provided in the media interview are:

- The employee visiting the Legislative Assembly on March 30th and approaching elected officials;
- That the suspension with pay is not connected to the employee approaching elected officials and raising concerns but that the suspension was because of complaints received before and since the employee's visit to the Legislative Assembly.

[62] It should be noted that the President and CEO limited what he disclosed to the media. He disclosed the personal information listed above but he declined to comment when pressed by the media to discuss the nature of the complaints, and from whom the complaints were received.

[63] Second, as detailed above, I find that the personal information was disclosed by the President and CEO to the media. Disclosure of employment history, on its face, is an invasion of privacy.

[64] Third, I need to determine if there is a public interest in the release of the personal information.

[65] In Review Report 145-2014, I set out the criteria to be considered when determining if a record relates to a matter of public interest. It should be noted that this criteria was set in the context of a review of an access to information request, and not in an investigation into an alleged breach of privacy.

[66] I have adapted the criteria in that report to make them apply to an investigation of an alleged breach of privacy:

1. Did the release of personal information contribute to the public understanding of, or a debate or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be, if the public knew about it?
 - Are there indicators that the public has or would have an interest in the personal information?

2. Did the release of personal information contribute to open, transparent and accountable government?
 - Has the release of the personal information assisted in the understanding of how the public body reached, or will reach, a decision?
 - Has the release of personal information shed light on an activity of the public body that was called into question?
3. Did the individual whose personal information was released contribute in any way to placing this issue in the public eye?

[67] I will apply the criteria quoted above in determining if SRHA's release of personal information was in the public interest.

[68] For the first criteria, there already had been an ongoing public debate in the Legislative Assembly and the media over the quality of seniors' care. On April 21, 2015, the Opposition questioned the government as to why the care aide was suspended for raising concerns about the quality of care of seniors. Thus, the President and CEO of SHRA's release of personal information to the media contributes to the public understanding of a debate that was of concern to the public.

[69] With respect to the second criteria, the suspension of the care aide was called into question by the Opposition in the Legislative Assembly on April 21, 2015. It alleged that the suspension was because the care aide raised concerns over the quality of seniors' care. Thus, the release of personal information by the President and CEO of SRHA - specifically that the suspension is not connected to the care aide's raising of concerns but because of complaints made against him - sheds light on the suspension of the care aide.

[70] In regard to the third criteria, I note that the care aide engaged in several interviews with the media, including those listed below, that placed the issue of his suspension in the public eye:

- Global News: Whistleblower files privacy complaint against Sask. premier - <http://globalnews.ca/news/1957798/whistleblower-files-privacy-complaint-against-sask-premier/>. Dated April 23, 2015.
- Leader-Post: Saskatoon care home whistleblower claims breach of privacy - <http://www.leaderpost.com/news/Saskatoon+care+home+whistleblower+claims+breach+privacy/10993134/story.html>. Dated April 22, 2015.

- StarPhoenix: Health care 'whistleblower' suspended from Saskatoon care home - <http://www.thestarphoenix.com/life/Health+care+whistleblower+suspended+from+Saskatoon+care+home/10989900/story.html>. Dated April 21, 2015.
- CTV News: Care aide worker suspended with pay says it's because he spoke out - <http://saskatoon.ctvnews.ca/care-aide-worker-suspended-with-pay-says-it-s-because-he-spoke-out-1.2337715>. Dated April 21, 2015.
- CBC News: Whistle-blowing care aide suspended, NDP raising questions - <http://www.cbc.ca/news/canada/saskatchewan/whistle-blowing-care-aide-suspended-ndp-raising-questions-1.3042940>. Dated April 21, 2015.

[71] The articles above were accessible at the noted web links as of July 6, 2015.

[72] Therefore, I find that there was a public interest in the release of the personal information.

[73] Finally, since I find there is a public interest and an invasion of privacy, I need to determine if this public interest outweighs any invasion of privacy.

[74] I must consider all relevant circumstances in determining whether public interest outweighs the invasion of privacy.

[75] The circumstances I have considered are as follows:

- a. The care aide brought forth his concerns about the quality of care for seniors;
- b. On March 30, 2015, the Opposition, publicly sought assurances from the Premier that the care aide would not face retribution for raising concerns over seniors' care;
- c. On March 30, 2015, the Premier publicly provided assurances to the care aide, and to health care workers, that they do not have to worry when they raise concerns over seniors' care;
- d. On April 21, 2015, the Opposition publicly questioned the Premier during Question Period why the care aide was suspended for raising concerns over seniors' care; and
- e. The care aide was interviewed by the media about his beliefs for his suspension.

[76] In addition to the circumstances listed above, I have considered the following excerpt from *Grant v. Torstar Corp.*, [2009] 3 SCR 640, 2009 SCC 61:

To be of public interest, the subject matter “must be shown to be one inviting public attention, or about which the public has some substantial concern because it affects the welfare of citizens, or one to which considerable public notoriety or controversy has attached”: Brown, vol. 2, at pp. 15-137 and 15-138.

[77] Based on the circumstances listed above, I find that the public interest outweighs any invasion of privacy. Below are my reasons for this finding:

- The Opposition publicly raised the concerns of the care aide and sought assurances from the Premier.
- By speaking to the media that he believed his suspension was because he raised concerns, the care aide invited public attention.
- On April 21, 2015, the reasons behind the care aide’s suspension came under public scrutiny when the Opposition alleged that the suspension was because the care aide raised concerns in the Legislative Assembly.
- The releasing of information through the media interview by the President and CEO that the suspension was not related to the raising of concerns but that it is because of complaints received provides relevant information and sheds light on a matter of public interest.

[78] I note that in most cases, the disclosure of an individual’s employment history should be presumed to be an unreasonable invasion of privacy. However, the circumstances of this case where the care aide invited public attention by speaking to the media about the reasons he believed were behind his suspension, made the care aide’s employment history a matter of public interest, as described above in *Grant v. Torstar Corp* (supra).

[79] Therefore, I find that SRHA released the care aide’s personal information to the media in accordance with subsection 28(2)(n)(i) of LA FOIP.

Flow #4 – Information from the Ministry of Health to the Health Minister’s Office

[80] In order for Health to have had the authority to use or disclose the care aide's personal information, it must have had authority to collect the personal information in the first place. Previously, I have found that Health did not have authority under section 25 to collect the care aide's personal information from Oliver Lodge. As such, I find that Health did not have authority to use or disclose the care aide's personal information by sharing it with the Health Minister's office.

Flow #5 – Information from the Health Minister's office to the Premier's Office

[81] Based on materials provided to me, I am able to discern that the care aide's personal information took the following route to the Premier's office and beyond on April 20, 2015:

- From Oliver Lodge to CCB of the Ministry of Health (10:34am),
- From CCB of the Ministry of Health to the Deputy Minister's office (10:36am),
- From Deputy Minister's Office to Health Minister's office (10:42am)
- From a staff person in the Health Minister's office to the Premier's office (10:52am),
- From the Premier's Chief of Operations and Communications to Media (many emails sent between 12:01pm and 1:38pm).

[82] FOIP applies to government institutions. Subsection 2(1)(d) of FOIP defines government institutions. Subsection 2(2)(b) of FOIP defines what is not a government institution. It provides:

2(2) "Government institution" does not include:

...

(b) the Legislative Assembly Service or offices of members of the Assembly or members of the Executive Council;

[83] The Health Minister's office and the Premier's office each are "offices of members of the Assembly or members of the Executive Council". Based on subsection 2(2) of FOIP, I find that the Health Minister's office and the Premier's office do not qualify as a "government institution". Therefore, FOIP does not apply to this particular flow of information.

- [84] I have concluded that Ministers' offices including the Premier's office and their staff are exempt from the application of FOIP. Thus my comments that follow are observations only but they do form the basis for a number of recommendations made at the end of this report.
- [85] The care aid working for a local authority did not have the benefit or protection of the *Public Interest Disclosure Act* because that Act does not extend to staff in regional health authorities and health care organizations. In the future, staff in regional health authorities and health care organizations may have concerns, I would recommend that this Act or the regulation be amended to include staff who work in regional health authorities and health care organizations.
- [86] Protection of privacy is becoming of greater interest and concern across North America. Public bodies, public servants and politicians need to be familiar with the law and their obligations. Members of the Legislative Assembly and Ministers are not exempt from society's expectations that they protect personal information and personal health information. There needs to be a standard that MLAs, Ministers and their staff look to and follow. This can be achieved by doing one or more of the following: amending FOIP, developing a code of conduct established by the Board of Internal Economy and an updating of the *Overarching Personal Information Privacy Framework* (adopted in 2003). I encourage the Premier, Ministers, the Leader of the Opposition and all MLAs to support implementing some or all of the above.

Flow #6 – Information from the Premier's office to the media

- [87] Since I have determined that FOIP does not apply to the Premier's office, then I conclude that FOIP does not apply to this particular flow of information.
- [88] As indicated above that Ministers and MLAs should have standards and best practices when dealing with personal information and personal health information, the staff in their offices need direction and a standard to which they can refer. One or more of the following, amending FOIP, developing a code of conduct, updating the *Overarching*

Personal Information Privacy Framework, and amending the *Public Interest Disclosure Act* or regulations should be supported and then implemented.

IV FINDINGS

Flow #1

[89] I find that the information disclosed by Oliver Lodge qualifies as personal information.

[90] I find that Oliver Lodge did not have authority under LA FOIP to disclose details pertaining to allegations made against the care aide to Health.

[91] I find that Health did not have authority under section 25 of FOIP to collect details pertaining to allegations made against the care aide.

Flow #2

a. Communications between SRHA and Health between March 30, 2015 and April 17, 2015

[92] I find that the information in the emails to qualify as personal information as defined by subsection 24(1)(b) of FOIP and 23(1)(b) of LA FOIP.

[93] I find that SRHA did not have authority under LA FOIP to disclose details pertaining to allegations made against the care aide to Health.

[94] I find that Health did not have authority under section 25 of FOIP to collect details pertaining to allegations made against the care aide.

b. Communications between SRHA and Health from April 20, 2015 and onwards

[95] I find that SRHA did not disclose the care aide's personal information to Health.

Flow #3

[96] I find that SRHA had authority pursuant to subsection 28(2)(n)(i) of LA FOIP to disclose personal information to the media.

Flow #4

[97] I find that Health did not have authority to use or disclose the care aide's personal information by sharing it with a staff person in the Health Minister's office.

Flow #5

[98] I find that neither the Health Minister's office nor the Premier's office qualify as a government institution as defined by FOIP.

[99] I find that FOIP does not apply to this particular flow of information.

Flow #6

[100] I find that the Premier's office does not qualify as a government institution as defined by FOIP.

[101] I find that FOIP does not apply to this particular flow of information.

V RECOMMENDATIONS

[102] I recommend that Oliver Lodge issue an apology to the care aide for disclosing the care aide's personal information without authority under LA FOIP.

[103] I recommend that Oliver Lodge establish its authority under LA FOIP prior to disclosing personal information to the Ministry of Health. This will include developing policies

and/or procedures to guide staff in knowing when it is appropriate to disclose personal information (and how much), and when it is not.

[104] I recommend that SRHA issue an apology to the care aide for disclosing the care aide's personal information without authority under LA FOIP.

[105] I recommend that SRHA establish its authority under LA FOIP prior to disclosing personal information to the Ministry of Health. This will include developing policies and/or procedures to guide staff in knowing when it is appropriate to disclose personal information (and how much), and when it is not.

[106] I recommend that the Ministry of Health issue an apology to the care aide for collecting the care aide's personal information without authority under FOIP.

[107] I recommend that the Ministry of Health establish its authority under FOIP prior to it requesting personal information from other organizations. This will include developing policies and/or procedures to guide staff in knowing when it is appropriate to collect personal information (and how much), and when it is not.

[108] I recommend that privacy protection of personal information be extended to offices of members of the Legislative Assembly or to members of Executive Council by doing one or more of the following:

- a. the introduction of legislative amendments to FOIP which make offices of members of the Legislative Assembly or members of Executive Council subject to the privacy protection provisions applicable to personal information;
- b. the development of a code of conduct by the Board of Internal Economy governing the collection, use and disclosure of personal information by members of the Legislative Assembly; and/or
- c. the Government of Saskatchewan updating its *Overarching Personal Information Privacy Framework* to make it applicable to members of the Executive Council.

[109] I recommend that training programs be developed for offices of members of the Legislative Assembly including members of Executive Council to inform them of best practices for the collection, use, and disclosure of personal information.

[110] I recommend that the Government of Saskatchewan make the protections set out in *The Public Interest Disclosure Act* available to employees of regional health authorities and health care organizations.

Dated at Regina, in the Province of Saskatchewan, this 17th day of August, 2015.

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