

**SASKATCHEWAN  
INFORMATION AND PRIVACY COMMISSIONER**

**INVESTIGATION REPORT 107/2014**

**Saskatchewan Research Council**

**Summary:** Saskatchewan Research Council (SRC) used the personal information of the Complainant to communicate to its employees that he may be a threat to their health and safety. SRC relied on subsection 29(2)(m) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and 16(f) of the FOIP Regulations to do so. The Commissioner found that too much personal information had been used under subsection 29(2)(m) of FOIP and that personal information did not need to be shared to achieve the purpose SRC had indicated for subsection 16(f) of the FOIP Regulations. The Commissioner recommended SRC develop a policy and provide an apology to the Applicant.

**I BACKGROUND**

[1] As a result of an access request, Saskatchewan Research Council (SRC) released copies of three emails to the Complainant. The three emails were sent from within SRC to SRC staff and board members. One of the emails was also provided to SRC's legal counsel.

[2] The emails advise employees that the Complainant intended to commence a lawsuit against SRC and that he had submitted access to information requests to SRC. In these emails, SRC indicates it does not believe the Complainant will show up at SRC premises but if he does to ask him to leave and advise him he is only to communicate with SRC and employees through SRC legal counsel. It also indicates that if employees feel threatened or if he refuses to leave they are to contact the police.

- [3] A June 2, 2014 letter from SRC to the Complainant also addresses the Complainant's concern regarding the use of his photograph. The letter states: "A verbal briefing was provided to SRC's executive team and board on the overall situation. Following the briefing, the board requested and received a copy of a picture of you in order to identify you if you approached them directly..."
- [4] The Complainant then submitted a complaint to our office about the disclosure of his personal information in the three emails and the disclosure of his photograph to individuals without a need to know.
- [5] My office sent notification letters to SRC and the Complainant on October 7, 2014 advising our office would be investigating SRC's use of the Complainant's personal information.
- [6] SRC responded to this office in a submission dated October 21, 2014 indicating that they had authority to use this information pursuant to subsections 29(2)(m) and (u) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and subsection 16(f) of the FOIP Regulations.

## II DISCUSSION OF THE ISSUES

- [7] SRC is considered a government institution pursuant to subsection 2(1)(d)(ii) of FOIP.

### 1. Does the complaint involve the Complainant's personal information as defined by section 24 of FOIP?

- [8] Personal information is defined at section 24 of FOIP 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:

...

(g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the

correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

(h) the views or opinions of another individual with respect to the individual;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

...

[9] The fact that the Complainant had communicated that he intended to commence a lawsuit and that he had made access to information requests to SRC would qualify as personal information under subsection 24(1)(g) of FOIP as that would be of a private or confidential nature.

[10] The email also provides staff with instructions on how to respond to the Complainant, should they feel threatened by him. SRC indicated in their submission that the use of personal information was authorized as “there were reasonable grounds for concluding there is a danger to the health or safety of certain persons” and the use was “a direct effort to mitigate this danger.”

[11] In past reports, my office has determined that an opinion is a belief or assessment that may or may not be based on fact and is subjective in nature.

[12] The opinion that the Complainant would pose as a threat to the health and safety to individuals appears to meet this definition and would qualify as personal information under subsection 24(1)(h) of FOIP.

[13] In past reports, my office found that photographs of identifiable individuals plus their names would qualify as personal information under subsection 24(1)(k)(i) of FOIP as photographs of an individual are personal in nature.

[14] Based on this, I also find that the Complainant’s photograph would qualify as personal information under subsection 24(1)(k)(i) of FOIP.

**2. Did SRC have authority to use the Complainant's personal information?**

[15] Use is defined as “the internal utilization of personal information by a public body and includes sharing of the personal information in such a way that it remains under the control of that public body”. Subsection 28(b) of FOIP provides the following regarding use of personal information:

**28** No government institution shall use personal information under its control without the consent, given in the prescribed manner, of the individual to whom the information relates, except:

...

(b) for a purpose for which the information may be disclosed to the government institution pursuant to subsection 29(2).

[16] SRC has relied on subsections 29(2)(m) and (u) of FOIP and subsection 16(f) of the FOIP Regulations to authorize the use of the Complainant's personal information.

**i. Subsection 29(2)(m) of FOIP**

[17] Subsection 29(2)(m) of FOIP states:

**29(2)** Subject to any other Act or regulation, personal information in the possession or under the control of a government institution may be disclosed:

...

(m) where necessary to protect the mental or physical health or safety of any individual;

[18] In past reports, my office laid out a test when applying exemptions involving the protection of the health and safety of any individual. That test is as follows:

- a) must be a reasonable expectation of harm;
- b) harm must constitute damage or detriment and not mere inconvenience; and
- c) must be a causal connection between use and the anticipated harm.

- [19] SRC's first submission generally addressed the use of this personal information to protect certain individuals. It relied on the opinion that the Complainant's "communications to SRC were threatening, harassing and abusive in nature." My office asked SRC to provide examples of these communications. The examples provided demonstrated that the Complainant was critical of SRC and its staff and he made several accusations. However, I did not note any material that suggests he threatened the health or safety of any individual.
- [20] However, in response to my office's draft report, SRC provided us with a court decision from Hong Kong where the Complainant was found guilty of assault against an individual who was engaged in another legal battle with the Complainant. This demonstrates to me that the Complainant has a history of inappropriate behaviour when in conflict. I recognize that SRC has a duty to ensure a safe workplace for its employees and I believe it was reasonable for SRC to expect there may be a risk. As such, the first part of the test is met. Also, given the nature of the assault charges, the harm involved would constitute more than mere inconvenience. The second part of the test is also met.
- [21] However, there must also be a causal connection between the use and the anticipated harm. The use of the opinion that the Complainant would pose as a threat to the health and safety to individuals and the photograph are directly relevant to the protecting the health and safety of individuals. However, there is no connection between the harm and the fact that the Complainant had made several access requests to SRC and that he intended to commence a lawsuit. Too much personal information was used for these purposes.
- [22] I find that SRC was authorized to use the opinion about the Complainant and the photograph pursuant to subsection 29(2)(m) of FOIP. I find it was not authorized to share the other personal information.

**ii. Subsection 16(f) of the FOIP Regulations**

[23] SRC indicated in its submission that it used the information pursuant to subsection 29(2)(u) of FOIP which indicates that personal information may be used as prescribed in the FOIP Regulations. SRC then relied on subsection 16(f) of the FOIP Regulations which provides as follows:

**16** For the purposes of clause 29(2)(u) of the Act, personal information may be disclosed:

...

(f) for the purpose of commencing or conducting a proceeding or possible proceeding before a court or tribunal;

[24] In its response to my office's draft report, SRC indicated that it used the personal information of the Complainant for the purpose of conducting a possible proceeding before a court. It indicated that it did so because "in any litigation, the litigants are well advised to avoid any confrontation with each other. The steps that SRC outlined in the communications, in combination with provision of the picture at the Board's request, are reasonably part of this process and a further reason why subsection 16(f) is applicable in these circumstances."

[25] The instructions that SRC provided to its employees on what to do if the Complainant presented himself at the workspace would not qualify as his personal information. This could have been achieved without the use of the Complainant's personal information. Government institutions should use the least amount of personal information required for the purposes. As such, I find subsection 16(f) of the FOIP Regulations did not authorize the use of the Complainant's personal information.

**III FINDINGS**

[26] I find that the emails contain the Complainant's personal information and that the photograph is the Complainant's personal information.

[27] I find that SRC had the authority to use the opinion about the Complainant and his photograph pursuant to section 29(2)(m) of FOIP.

[28] I find that SRC did not have authority to use other personal information of the Complainant.

#### **IV RECOMMENDATIONS**

[29] I recommend that SRC develop a policy on instructions given to employees for dealing with former employees, and other individuals, who are involved in litigation with SRC. This should ensure the use of the least amount of personal information necessary for the purpose.

[30] I recommend that SRC issue an apology to the Complainant for the unauthorized use of his personal information.

Dated at Regina, in the Province of Saskatchewan, this 12th day of February, 2015.

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