



INVESTIGATION REPORT 133-2015

Saskatchewan Power Corporation

October 8, 2015

Summary:

The Commissioner received a complaint that Saskatchewan Power Corporation (SaskPower) inappropriately disclosed personal information and personal health information to Workers' Compensation Board (WCB). The Commissioner considered which portions of *The Freedom of Information and Protection of Privacy Act* (FOIP) and *The Health Information Protection Act* (HIPA) applied in these circumstances. He found that only FOIP applied in this circumstance. Further, he found that SaskPower had the authority to disclose the Complainant's personal information pursuant to subsection 29(2)(i)(i) of FOIP. The Commissioner recommended SaskPower develop a policy specific to disclosures of this and similar types of situations. SaskPower agreed to comply with this recommendation.

I BACKGROUND

- [1] On June 25, 2015 my office received a complaint regarding an alleged breach of privacy. The Complainant alleged that Saskatchewan Power Corporation (SaskPower) inappropriately disclosed her personal information and personal health information to Workers' Compensation Board (WCB).
- [2] The Complainant first raised her concerns with SaskPower on April 8, 2015. In a letter dated June 25, 2015, SaskPower responded to the Complainant indicating that SaskPower did not infringe on any aspect of *The Freedom of Information and Protection of Privacy Act* (FOIP) or *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations) in providing the information to WCB.

[3] On July 9, 2015, my office provided notification to both SaskPower and the Complainant advising that my office would be conducting a privacy breach investigation pursuant to section 33 of FOIP. My office requested that SaskPower provide a copy of its internal privacy breach investigation report. It arrived at my office on August 13, 2015. In it, SaskPower reiterated what it had indicated to the Complainant, that no privacy breach had occurred and that SaskPower had authority to disclose the Complainant's personal information to WCB.

II DISCUSSION OF THE ISSUES

[4] SaskPower is a "government institution" pursuant to subsection 2(1)(d)(ii) of FOIP.

[5] SaskPower is also a "trustee" pursuant to subsection 2(t)(i) of *The Health Information Protection Act* (HIPA).

1. Is there personal information and/or personal health information involved?

[6] Our customary analysis when dealing with a complaint under Parts IV of FOIP and HIPA is to first determine whether there is "personal information" and/or "personal health information" involved and then to consider which of the three primary privacy activities is engaged, i.e. collection, use and/or disclosure.

[7] Based on what has been provided to my office, the Complainant takes issue with SaskPower providing the following information to WCB:

- The Complainant was out of sick leave benefits;
- SaskPower was beginning to attendance manage the Complainant at work; and
- The Complainant had a history of claiming WCB benefits.

[8] How much sick leave an employee has taken or has remaining is personal health information pursuant to subsection 2(m)(i) of HIPA which provides:

2 In this Act:

...

(m) “**personal health information**” means, with respect to an individual, whether living or deceased:

(i) information with respect to the physical or mental health of the individual;

...

[9] However, subsection 4(4)(h) of HIPA provides that Parts II, IV and V of HIPA do not apply to personal health information obtained for the purposes of *The Workers’ Compensation Act, 2013* (WCA). Therefore, HIPA does not apply in this case.

[10] Information related to the performance of an employee, such as being on attendance management, is part of that individual’s employment history and is therefore personal information pursuant to subsection 24(1)(b) of FOIP. In addition, how often an individual has made WCB claims constitutes personal information pursuant to subsection 24(1)(k)(i) of FOIP. These subsections provide:

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;

...

(k) the name of the individual where:

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

...

[11] Therefore, I find that there is personal information of the Complainant’s involved in this matter. As such, FOIP is engaged on the facts in this case. Specifically, Part IV of FOIP which focuses on the public body’s responsibilities for the protection of personal information.

2. Did SaskPower have authority to disclose the Complainant's personal information to WCB?

[12] Based on the complaint received, it appears that the privacy activity at issue is SaskPower "disclosing" the personal information to WCB.

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

[14] Disclosure occurred in this case when SaskPower shared the Complainant's personal information with an outside entity, WCB. In its submission, SaskPower asserted that it had authority to disclose the Complainant's personal information pursuant to subsections 29(2)(i)(i), (l), (t) and (u) of FOIP. For subsection 29(2)(u) of FOIP, SaskPower cited subsections 16(a)(i) and (g)(i) of the FOIP Regulations.

[15] I will address SaskPower's reliance on subsection 29(2)(i)(i) of FOIP first. This provision enables a public body to disclose personal information without the consent of the individual where another Act or regulation requires it. Subsection 29(2)(i)(i) of FOIP provides:

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:

- ...
- (i) for the purpose of complying with:
 - (i) an Act or a regulation;
- ...

[16] In this case, the other Act or regulation requiring the disclosure which SaskPower points to is subsection 52 of the WCA which provides:

52 Within five days after the date on which an employer becomes aware of an injury that prevents a worker from earning full wages or that necessitates medical aid, the employer shall notify the board in writing of:

- (a) the nature, cause and circumstances of the injury;
- (b) the time of the injury;
- (c) the name and address of the injured worker;

- (d) the place where the injury happened;
- (e) the name and address of any physician who attends the worker for his or her injury; and
- (f) any further particulars of the injury or claim for compensation that the board may require.

[17] Subsection 52(f) would appear to require SaskPower to provide any further particulars of the injury or claim that WCB may require. Two principles which underlie FOIP and come into play are data minimization and need-to-know.

[18] *Data minimization* means that a public body should always collect, use and/or disclose the least amount of personal information necessary for the purpose.

[19] *Need-to-know* means that only those with a legitimate need to know for the purposes of delivering mandated services should have access to personal information.

[20] SaskPower asserted in its submission that all of the information provided to WCB was relevant to assist WCB in determining the merits of the injury claim being made by the Complainant. Further that, as an employer, SaskPower has a legitimate interest in ensuring that only valid workers' compensation claims are accepted by the WCB. SaskPower is the only employer in the electrical utility employer pool and every accepted claim impacts its claim history and the premiums it pays. Finally, that it owed it to its rate base to ensure that only valid claims forms part of its loss history.

[21] SaskPower provided additional information to my office to show why it shared the personal information with WCB. From a review of that information, it is clear that SaskPower was trying to demonstrate to WCB that there may have been a cumulative pattern of conduct by the Complainant that suggested the WCB claim may not have been legitimate.

[22] On the WCB E-1 form, which is required to be completed by employers, it states:

Do you have any reason to believe that this is not a work-related incident?

[23] SaskPower answered “yes” to this question and attached additional information outlining why it did not believe the claim was a legitimate work-related accident.

[24] Subsection 23(1) of the WCA provides:

23(1) The board shall make its decisions on the real merits and justice of each case and it is not bound to follow any legal precedent.

[25] Making a decision on its merits would mean making a decision on relevant information and not making a decision on information that is not directly related to the injury or claim for which compensation is sought. In this case, it appears the personal information provided by SaskPower was directly relevant to WCB assessing the claim as legitimate or not. As such, SaskPower is authorized to provide it pursuant to subsection 52(f) of the WCA.

[26] Therefore, I find that SaskPower had authority to disclose the Complainant’s personal information to WCB pursuant to subsection 29(2)(i)(i) of FOIP.

[27] On a separate note, SaskPower provided a copy of its privacy policy to my office in support of its position. I reviewed this policy and found no direct reference to disclosures of personal information in circumstances like the one in this case.

[28] Therefore, I recommend that SaskPower develop a separate internal policy specific to disclosures in this and similar types of situations. Given the potential sensitivity of the personal information involved, it is important that there is clear direction to staff on what can be disclosed in these types of situations. The policy should speak to relevancy of information and data minimization.

[29] The findings and recommendations outlined in this report were shared with SaskPower on September 24, 2015. On October 5, 2015, SaskPower responded indicating that a set of guidelines would be established as recommended and provided a reasonable timeline for their implementation.

IV FINDINGS

[30] I find that SaskPower had authority to disclose the Complainant's personal information to WCB pursuant to subsection 29(2)(i)(i) of FOIP.

V RECOMMENDATION

[31] I recommend that SaskPower develop a policy specific to disclosures of this and similar types of situations.

Dated at Regina, in the Province of Saskatchewan, this 8th day of October, 2015.

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