



Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 249-2017

Ministry of Justice and Attorney General

December 11, 2017

Summary:

The Complainant was concerned when his home address was published in *The Saskatchewan Gazette* (the *Gazette*) after he registered his home-based business in 2017. The Ministry of Justice and Attorney General indicated that *The Freedom of Information and Protection of Privacy Act* (FOIP) did not apply in these circumstances because the business name registry is a public registry. The Commissioner found that FOIP applies until the Ministry adds information to the public registry. He found that the address posted in *The Gazette* was the information of the business and not the Complainant. He also found that the Ministry did not have the authority to make as much information available as it does on the registry through Information Services Corporation and recommended it review its practices.

I BACKGROUND

- [1] On August 28, 2017, the Complainant raised a privacy concern with the Ministry of Justice and Attorney General (the Ministry). He was concerned that the Office of Public Registry Administration (OPRA) published his home address in *The Saskatchewan Gazette* (the *Gazette*) after he registered his home-based business in 2017.
- [2] The OPRA is part of the Ministry. It responded to the Complainant on September 12, 2017. It stated that the information in the *Gazette* is published information and therefore *The Freedom of Information and Protection of Privacy Act* (FOIP) does not apply

pursuant to section 3 of FOIP. The Ministry's response also explained the process of registering a business and publishing it in the *Gazette*.

- [3] The Complainant was dissatisfied with the Ministry's response and, on October 10, 2017, requested that my office investigate the issue. On October 17, 2017, my office provided notification to both the Ministry and the Complainant that I would undertake an investigation.

II DISCUSSION OF THE ISSUES

1. Does FOIP apply in these circumstances?

- [4] The Ministry qualifies as a government institution pursuant to subsection 2(1)(d)(i) of FOIP.

- [5] Subsection 3 of FOIP provides:

3(1) This Act does not apply to:

(a) published material or material that is available for purchase by the public;

(b) material that is a matter of public record; or

(c) material that is placed in the custody of the Provincial Archives of Saskatchewan by or on behalf of persons or organizations other than government institutions.

(2) This Act binds the Crown.

- [6] In its submission, the Ministry indicated that FOIP does not apply in these circumstances because the Corporate Registry is a public registry. Therefore, it submitted that the information in question is published material and a matter of public record pursuant to subsection 3(1)(a) and (b) of FOIP.

[7] My office has not defined “published” in the past. The Ontario Information and Privacy Commissioner adopted a definition of “published” from *Black’s Law Dictionary* (fifth edition) as follows: “to make known to people in general ... An advising of the public or making known of something to the public for a purpose.” I also adopt this definition.

[8] My office defined “a matter of public record” in Review Report LA-2007-002 as “documents that one would typically find in a public register that the members of the public have ready access to.”

[9] In its submission, the Ministry outlined the process and authority for registering a business.

[10] The corporate registry is established pursuant to section 4 of *The Business Names Registration Act* (the BNRA) which provides:

4(1) Subject to subsection (3), every person who carries on business under a business name shall cause the business name to be registered under this Act.

(2) Every person who intends to carry on business under a business name may cause the business name to be registered under this Act.

(2.1) The business names registered pursuant to subsections (1) and (2) form a public registry of the people of Saskatchewan.

(2.2) All information in the registry is the property of the Government of Saskatchewan.

...

[Emphasis Added]

[11] Pursuant to subsection 4(2.2) of the BNRA, the information in the registry is the property of the Government of Saskatchewan, not of Information Services Corporation (ISC). Subsection 2(e) of the BNRA defines “registrar” as the Director of Corporations. The Ministry indicated that the Director of Corporations is employed with OPRA, which is part of the Ministry.

[12] To register a business name, first a “Registration of a Saskatchewan Business Name” form is completed and submitted to ISC. The Ministry indicated that ISC is the government’s service provider in relation to the public registry.

[13] Pursuant to subsection 6(2) of the BNRA, an application is made to register a business. It provides:

6(2) An application shall consist of a declaration in a form prescribed in the regulations or, in the case of a limited partnership, in a form containing the information mentioned in section 16.

[14] The BNRA or *The Business Names Registration Regulations* do not provide a further definition of a “declaration”. In its submission, the Ministry indicated that the completed form serves as the declaration.

[15] The Ministry indicated that a physical and mailing address of the business are required in an application to register a business pursuant to section 4.1 of *The Business Names Registration Regulations* which provide:

4.1(1) For the purposes of subsection 6(2) of the Act, the form of an application for registration of a business name is provided in this section.

(2) An application for registration of a business name must include the following:

...

(f) the primary physical address of the business, consisting of one of the following:

(i) the street address of the business, if any;

(ii) if there is no street address, a legal land description of the land on which the business is located, including the rural municipality name and number;

(g) any other physical address of the business;

(h) the mailing address of the business, if different from the primary physical address;

[16] Once a business name has been registered and the declaration is complete, subsection 14(3) of the BNRA requires that the Director of Corporation publish the declaration in the *Gazette*. It provides:

14(1) The registrar shall keep a record of every business name that is registered or cancelled under this Act.

(2) The registrar shall cause the business names to be entered in the record in alphabetical order and he shall cause to be placed opposite each entry the name of the person or persons carrying on business or intending to carry on business under that name, the date of the registration and, if the registration has been cancelled, the date of the cancellation.

(3) The registrar shall cause notice to be published in the *Gazette* of every declaration in respect of which a business name is registered and of the cancellation by him of any such registration, but no publication of notice of a renewal of registration shall be required.

[17] While subsection 14(3) of the BNRA requires the Ministry to publish the declaration in the *Gazette*; practically, the Ministry only publishes the name and mailing address of the business, the main type of business and the date of registration.

[18] I also note that the BNRA does not define the registry. Subsections 14(1) and (2) of the BNRA indicates that the registrar should keep a record of every business name that is registered. Also business names, the name of the person or persons carrying on business or intending to carry on business under that name, the date of the registration and, if the registration has been cancelled, the date of the cancellation should be recorded. However, I note that the Ministry makes the entire declaration form public through ISC.

[19] While subsection 3(1) of FOIP indicates that FOIP does not apply to published material or material that is a matter of public record, I note that it is the Ministry that publishes the information and makes the information a matter of public record. I acknowledge that subsection 4(2.1) of the BNRA indicates that the registry is a matter of public record. The Ministry is responsible for determining what registration forms provide the information necessary to qualify for the registry. Before the Ministry determines what information

will be added to the registry and publishes the information, it collects information on the registration form that becomes the declaration.

[20] Part IV of FOIP, which addresses protection of privacy, would apply to the Ministry's action of publishing any personal information. If Part IV did not apply in this circumstance, then it would mean that all government institutions could publish personal information for the purpose of avoiding their responsibilities to protect personal information under FOIP.

[21] The access provisions of FOIP apply to any information that has not been published.

[22] The Ministry has submitted that FOIP does not apply. I agree FOIP does not apply in some instances where the criteria in section 3 are met. This surrounds determining whether something is "published" or is "a matter of public record". Where FOIP does not apply, it would only apply to what is actually published but would apply to all steps leading up to that such as collection and use of data. Where FOIP would not apply because of a public record, it would still apply to all actions related to collection or use of data. Even accepting from time to time that FOIP would not apply, government institutions are best served by determining what data elements are actually published or made part of a public record. Best practice would always suggest in publishing information or putting it in a public record, the least amount of personal information be disclosed. This becomes truer in the world of the World Wide Web when the public record is in fact online and searchable. Publishing online really means the information is potentially available to six to nine billion people. I would hope the Ministry would scrutinize very carefully what it publishes in the Gazette or online at ISC.

2. Does the information published in the *Gazette* qualify as personal information?

[23] The Complainant was concerned that his home address was published in the Gazette.

[24] Personal information is defined in subsection 24(1) of FOIP. The relevant provisions are 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:

...

(e) the home or business address, home or business telephone number or fingerprints of the individual;

[25] The definition of personal information requires that the information be about an identifiable individual. Further, subsection 24(1)(e) of FOIP indicates that the home or business address of an individual is personal information.

[26] The registration form that the Complainant filled out to register his business asked for four addresses:

- Section 2 asked for the address of the information submitting the information. The Ministry explained that this is sometimes a law firm.
- Section 3 asked for the business’ physical address, the business’ mailing address and any other physical addresses of the business.
- Section 4 asked for the proprietor’s or partners’ addresses.

[27] The Complainant used the same address in sections 2 (submitter address), section 3 (business physical and mailing address) and section 4 (proprietor’s address).

[28] Although all are the same, the address submitted in sections 2 and 4 would qualify as personal information pursuant to subsection 24(1)(e) of FOIP because they are the home and business address of the Complainant who is the proprietor and the submitter in this case. However, the addresses submitted for section 3 is the physical and mailing address of the business, not of an identifiable individual.

[29] The Ministry published the address of the business in the *Gazette*. As such, I find that the Ministry did not publish the Complainant’s personal information in the *Gazette*.

3. Does the Ministry have the authority to publish personal information in the *Gazette* or to make that personal information a matter of public record in the registry?

[30] Publishing personal information or making it publically available would qualify as a disclosure of personal information.

[31] Subsection 29(2)(t) 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:

...

(t) for any purpose in accordance with any Act or regulation that authorizes disclosure; or

[32] As noted, it is the Ministry's practice to publish the name and mailing address of the business, the main type of business and the date of registration in the *Gazette*. This is all information about the business and would not qualify as personal information. However, subsection 14(3) of the BNRA allows that the entire declaration be published in the *Gazette*. Pursuant to section 4.1 of *The Business Names Registration Regulations*, this includes the address of the proprietor and the contact information of the submitter. Although this doesn't quite comply with the BNRA, I would suggest that the best practice be that the Ministry only publish the least amount of information in relation to details of the registration.

[33] Conversely, the Ministry makes the entire declaration form available as part of the business name registry through ISC. The declaration usually contains personal information such as the home or business address of the proprietor and the submitter. However, subsections 14(1) and (2) of the BNRA states that the registrar should keep a record of only the business name, the name of the person or persons carrying on business or intending to carry on business under that name, the date of the registration and, if the registration has been cancelled, the date of the cancellation. I would suggest the Ministry reconsider making the entire declaration form available and only make available the least amount of information regarding the declaration.

- [34] In effect, the Ministry has authority to publish more information in the *Gazette*, but limits the amount of information published. The Ministry allows more information to be made available from the public registry, accessible through ISC, than the BNRA allows.
- [35] While I applaud the practice of limiting what personal information is published in the *Gazette*, I am concerned that it is making too much personal information publically available on the registry accessible through ISC.
- [36] I find that the Ministry does not have authority to make personal information publically available on the registry accessible through ISC.
- [37] I recommend the Ministry study this issue through a privacy impact assessment tool and consider whether a change in practice or an amendment to the BNRA is necessary.

III FINDINGS

- [38] I find that FOIP applies in these circumstances.
- [39] I find that the Ministry did not publish the Complainant's personal information in the *Gazette*.
- [40] I find that the Ministry does not have authority to make personal information publically available on the registry accessible through ISC.

V RECOMMENDATION

[41] I recommend the Ministry study this issue through a privacy impact assessment tool and consider whether a change in practice or an amendment to the BNRA is necessary so that there is authority to disclose personal information by making it publically available on the registry accessible through ISC.

Dated at Regina, in the Province of Saskatchewan, this 11th day of December, 2017.

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