



INVESTIGATION REPORT 275-2017

Saskatchewan Power Corporation

January 31, 2018

Summary: The Complainant was concerned that Saskatchewan Power Corporation (SaskPower) disclosed his personal information to the Regina Police Service. The Commissioner investigated the matter and found that SaskPower had the authority to disclose pursuant to subsection 29(2)(g) of FOIP. He recommended that SaskPower take no further action.

I BACKGROUND

- [1] On August 7, 2017, the Complainant wrote to Saskatchewan Power Corporation (SaskPower) alleging that SaskPower disclosed his name and contact information to the Regina Police Service (RPS). He alleged the disclosure was made in connection to an investigation into a bomb threat made to SaskPower.
- [2] On August 18, 2017, SaskPower replied to the Complainant. Because the Complainant had commenced legal action against SaskPower, and because both parties were represented by counsel, it informed the Complainant that communication could only occur between the lawyer acting for the Complainant and the external lawyer retained by SaskPower. The external lawyer representing SaskPower in the legal action did not respond to the Complainant's privacy concern.
- [3] On October 20, 2017, the Complainant brought his concerns to my office. During early resolution, SaskPower again indicated that because both parties were represented by lawyers with respect to the legal action, it would not respond to the Complainant's

complaint. My office informed SaskPower that the Complainant's privacy concerns and the legal action were separate matters and that I would proceed with the investigation.

- [4] On November 3, 2017, my office provided notification to both SaskPower and the Complainant of my intention of undertaking an investigation.

II DISCUSSION OF THE ISSUES

1. Does FOIP apply in these circumstances?

- [5] *The Freedom of Information and Protection of Privacy Act* (FOIP) applies to privacy matters when three elements are present. The first element is a government institution, the second element is personal information and the third element is if the personal information is in the possession or control of the government institution.

- [6] SaskPower qualifies as a government institution pursuant to subsection 2(1)(d)(ii) of FOIP.

- [7] Subsection 24(1) of FOIP provides a definition of personal information. Some of the relevant clauses 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:

...

(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;

...

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

...

(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;

- [8] The list of examples provided at subsection 24(1) are not meant to be exhaustive. There can be other types of information that would qualify as personal information that are not listed. Part of that consideration involves assessing if the information has both of the following: 1. Is there an identifiable individual? 2. Is the information personal in nature?
- [9] Personal in nature means that the information reveals something personal about the individual. Information that relates to an individual in a professional, official or business capacity could only qualify if the information revealed something personal about the individual for example, information that fits the definition of employment history.
- [10] The Complainant alleged that SaskPower disclosed his name and contact information to the RPS. For the purpose of this investigation, SaskPower provided my office with written communications regarding the bomb threat in its possession and control spanning a period from September 10, 2015 to October 20, 2015. Upon review of these documents, it appears that SaskPower disclosed the following data elements to the RPS.
- [11] A current and past address of the Complainant (at the time of the disclosure) was disclosed to the RPS. This constitutes personal information pursuant to subsection 24(1)(e) of FOIP.
- [12] Employment history is the type of information normally found in a personnel file such as performance reviews, evaluations, disciplinary actions taken, reasons for leaving a job or leave transactions. Employment history was disclosed to the RPS. It qualifies as personal information pursuant to subsection 24(1)(b) of FOIP.
- [13] SaskPower informed the RPS about communications with the Complainant related to FOIP. Information of this nature would qualify as personal information pursuant to subsection 24(1)(g) of FOIP because it is correspondence sent to a government institution by the Complainant that is implicitly or explicitly of a private or confidential nature.
- [14] Finally, in a professional capacity, an employee of SaskPower provided an opinion of the Complainant's accent to the RPS. This would qualify as the personal information of the Complainant pursuant to subsection 24(1)(h) of FOIP.

[15] FOIP applies in these circumstances.

2. Did SaskPower have authority to disclose the personal information in question to the RPS?

[16] SaskPower indicated that it had the authority to disclose personal information to the RPS pursuant to subsection 29(2)(g) of FOIP.

[17] Subsection 29(2)(g) 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:

...

(g) to a prescribed law enforcement agency or a prescribed investigative body:

(i) on the request of the law enforcement agency or investigative body;

(ii) for the purpose of enforcing a law of Canada or a province or territory or carrying out a lawful investigation; and

(iii) if any prescribed requirements are met;

[18] Relevant sections of the Regulations provide:

14 For the purposes of clause 29(2)(g) of the Act, the following law enforcement agencies and investigative bodies are prescribed as law enforcement agencies or investigative bodies to which personal information may be disclosed:

...

(b) a police service or regional police service within the meaning of *The Police Act, 1990*;

...

[19] In Investigation Report 115-2013, my office commented on subsection 28(2)(g) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and indicated that in order for a local authority to be able to disclose personal information to a prescribed law enforcement agency or investigative body, the agency or body must have had to request it.

[20] In order for a government institution to disclose personal information under subsection 29(2)(g) of FOIP, the following circumstances must be met:

1. the disclosure must be made to a law enforcement agency or an investigative body that is prescribed in the Regulations (section 14 of the Regulations);
2. the disclosure must be for the purpose of enforcing a law of Canada or a province or territory or carrying out a lawful investigation;
3. The information must have been requested by the law enforcement agency or investigative body;
4. The disclosure must meet any requirements that are prescribed in the Regulations.

[21] Pursuant to subsection 14(b) of the Regulations, the RPS qualifies as a police service within the meaning of *The Police Act, 1990*. Therefore, the RPS qualifies as a prescribed law enforcement agency for the purposes of subsection 29(2)(g) of FOIP.

[22] The disclosure was made for the purpose of the RPS' investigation of a bomb threat made against SaskPower. In Review Report 139-2017, I found that RPS' investigation of the bomb threat was a lawful investigation.

[23] Now I must consider whether the personal information in question was requested by the RPS. From a review of the material provided by SaskPower, it is clear that the RPS asked SaskPower about any individuals who had parted from SaskPower and may be upset with the organization. In response, SaskPower disclosed the employment information of the Complainant. In addition, SaskPower disclosed information about correspondence regarding FOIP to illustrate its relationship with the Complainant. SaskPower also disclosed a former address of the Complainant and opinion about the Complainant's accent. I find this was appropriate in the context of the RPS's request for details of individuals that have parted from SaskPower.

[24] At a later date, the RPS also asked SaskPower for a current address of the Complainant. SaskPower provided the Complainant's address.

[25] Finally, there are no additional requirements currently listed in the Regulations.

[26] Subsection 29(2)(g) of FOIP authorized SaskPower to disclose the Complainant's personal information to the RPS.

III FINDING

[27] I find SaskPower was authorized to disclose the Complainant's personal information to the RPS pursuant to subsection 29(2)(g) of FOIP.

IV RECOMMENDATION

[28] I recommend that SaskPower take no further action.

Dated at Regina, in the Province of Saskatchewan, this 31st day of January, 2018.

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