



Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 162-2020

Water Security Agency

November 25, 2021

Summary: The Complainant left a voicemail for the Water Security Agency (WSA) seeking advice on an issue and requesting that the WSA call them back. The WSA disclosed the Complainant's personal information to the Town of Radisson (Town). As a result, an employee of the Town attended the Complainant's home, which was not what the Complainant wanted. The Complainant complained to the Commissioner. The Commissioner found that the privacy breach occurred when the WSA disclosed the Complainant's personal information to the Town. He made a few recommendations, including that the WSA send a letter to the Complainant apologizing for the privacy breach.

I BACKGROUND

[1] On June 15, 2020, the Complainant left a voicemail for an Environmental Project Officer at the Water Security Agency (WSA). The voicemail was as follows:

Hello, this is [name of Complainant] calling, [name of spouse] and I bought a house in Radisson. My [family member] ... moved in at [address] and so far he doesn't have any water that he can use to drink or anything else. Um, we're thinking about putting in a filtration system. We're wondering if that's sufficient. There's an ongoing water issue in Radisson and we can't seem to get to the bottom of it. Every time we try to ask the town for something we get threatened, we get humiliated, we get roasted. I'm wondering if you could call me and let me know just how safe it is or whether we just sell and move out of this little town because I'm getting set up. My number is [phone number]. That's [phone number]. He filled up the tub yesterday and the water was brown. Brown. Like what's going on? We need to know and we need to get a straight answer. Thank you.

- [2] On the same day, the WSA disclosed information about the Complainant to the Town of Radisson (Town).
- [3] Also on the same day, and as reported by the Complainant to my office, a man identifying himself as “the water guy” appeared at the Complainant’s house. One of the Complainant’s family members was at the house and let the man in. The family member called the Complainant to advise the Complainant that the man was at the house. The family member allowed the Complainant to speak to the man. The Complainant reported that the man said that the water in Radisson was perfect before the province got involved. The Complainant asked who the man worked for. The man replied “the Town of Radisson”. The Complainant told the man he was trespassing and needed to vacate the home immediately and not return ever without permission from the Complainant.
- [4] WSA received a privacy complaint from the Complainant. The WSA responded in an email to the Complainant dated July 3, 2020. In the letter, the WSA indicated that section 29(o)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and sections 16(c) and (g)(i) of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations) authorized the WSA to disclose the Complainant’s personal information to the Town.
- [5] The Complainant was dissatisfied with WSA’s response. Therefore, on July 13, 2020, they requested that my office conduct an investigation into the matter.
- [6] On July 15, 2020, my office notified both the WSA and the Complainant that it would be undertaking an investigation.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [7] The WSA is a “government institution” as defined by section 2(1)(d)(ii) of FOIP and section 3(a) and Part I of the Appendix of the FOIP Regulations. Therefore, I find that I have jurisdiction.

2. Is personal information involved?

- [8] Based on the materials provided to my office, I cannot determine if the Complainant’s voicemail itself was forwarded to the Town or if information extracted from the voicemail was forwarded to the Town. In its submission, the WSA indicated that it shared the Complainant’s name, phone number and address with the Town. Since an employee of the Town attended the Complainant’s house, I can determine the Complainant’s address was disclosed to the Town.

- [9] Section 24(1)(e) of FOIP includes the home telephone and home address of an individual in the definition of “personal information”. Sections 24(1)(e) and (k)(i) of FOIP 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:

...

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

...

(k) the name of the individual where:

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

- [10] Therefore, I find that personal information of the Complainant’s is involved.

3. Did a privacy breach occur?

- [11] A privacy breach occurs when personal information is collected, used, or disclosed without authority under FOIP. “Disclosure” is the exposure of personal information to a separate entity, not a division or branch of the government institution that has possession or control over the personal information ([Investigation Report F-2014-002](#) at paragraph [53]).

[12] Section 29(1) of FOIP provides that a government institution may disclose personal information with the individual's consent. Where the government institution does not have consent, then the government institution must have authority for disclosure under section 29(2) of FOIP.

[13] As described in the background, the WSA cited section 29(2)(o)(ii) of FOIP and sections 16(c) and (g)(i) of the FOIP Regulations as authority for the disclosure of the Complainant's personal information to the Town. Below is an analysis to determine if the WSA has demonstrated that it had authority under FOIP to disclose the Complainant's personal information to the Town.

a. Section 29(2)(o)(ii) of FOIP

[14] Section 29(2)(o)(ii) 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:

...

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

...

(ii) disclosure would clearly benefit the individual to whom the information relates.

[15] In [Review Report 20-165](#) by the former Nunavut Information and Privacy Commissioner (Nunavut IPC) commented on section 48(s)(ii) of Nunavut's *Access to Information and Protection of Privacy Act* (Nunavut ATIPPA). The Nunavut IPC said:

With respect to section 48(s)(ii), which allows for disclosure when disclosure would clearly benefit the individual to whom the information relates, I note here that word used in the legislation is "would", not "could" Thus the disclosure of the information must clearly benefit the individual.

[16] Similarly, section 29(2)(o)(ii) of FOIP uses the word "would". Therefore, the disclosure of the information must clearly benefit the individual. In its submission to my office, the WSA simply quoted section 29(2)(o)(ii) of FOIP as its authority. Initially, the WSA did not

explain how the disclosure of the Complainant's personal information to the Town would clearly benefit the individual. However, in the course of the investigation, the WSA explained that:

...it's common practice for WSA to engage municipal operators to diagnose and resolve localized water quality complaints (the brown water complaint) – as this is not the role of the Water Security Agency Environmental Project Officer. Therefore by engaging the Town it would be for the benefit of the complainant.

[17] The Complainant's voicemail was quoted at paragraph [1] of this Report. The Complainant is "wondering" two things:

- if putting in a filtration system is sufficient, and
- how safe the water is.

[18] Further, the Complainant described the nature of their interactions with the Town by saying how every time they ask the town for something, they are "threatened," "humiliated", and "roasted".

[19] Finally, I note that the Complainant requested that the WSA call them back.

[20] Based on the contents of the voicemail, I cannot conclude that the disclosure of the personal information would clearly benefit the individual as required by section 29(2)(o)(ii) of FOIP. Even if the WSA was of the opinion that the Town was in a better position to respond to the Complainant's questions, the WSA should have returned the Complainant's call to: (1) clarify the purpose of the Complainant's call, (2) explain the mandate of the WSA and what it can and cannot do to help the Complainant, (3) possibly explain that it is the Town that is in a better position to respond to the Complainant's questions or concerns, (4) request consent from the Complainant to disclose the Complainant's personal information to the Town pursuant to section 29(1) of FOIP, and (5) if the Complainant refuses to provide consent, then leave it to the Complainant to figure out the next steps they wished to take to resolve the matter.

[21] I find that the WSA has not demonstrated that section 29(2)(o)(ii) of FOIP authorized its disclosure of the Complainant's personal information to the Town.

[22] In the course of the investigation, the WSA explained that it attempted to call the Complainant three times with no answer prior to the WSA contacting the Town. The lack of a response from the Complainant still does not demonstrate that the disclosure of the Complainant's personal information to the Town was to the Complainant's benefit.

b. Sections 16(c) and (g)(i) of the FOIP Regulations

[23] Section 29(2)(u) of FOIP provides that a government institution may disclose personal information as prescribed in the regulations. The WSA did not cite section 29(2)(u) of FOIP as its authority for disclosure of personal information. Nevertheless, I will consider if sections 16(c) and (g)(i) of the FOIP Regulations authorized the WSA's disclosure of the Complainant's personal information to the Town. Sections 16(c) and (g)(i) of FOIP provide:

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

...

(c) where disclosure may reasonably be expected to assist in the provision of services for the benefit of the individual to whom the information relates;

...

(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 government institution;

[24] In its submission, the WSA did not provide an explanation as to how sections 16(c) and (g)(i) of the FOIP Regulations authorized the disclosure of the Complainant's personal information to the Town. Without an explanation, I must determine if the contents of the Complainant's voicemail provided a basis for the WSA to conclude that a disclosure of the Complainant's personal information pursuant to sections 16(c) and (g)(i) of the FOIP Regulations was authorized.

- [25] Section 16(c) of the FOIP Regulations speaks to the provision of services. As I have already summarized, in their voicemail, the Complainant was wondering: (1) if putting in a filtration system would fix the water issue they were experiencing and (2) if the water was safe. The Complainant was not seeking anything about the provision of services. Therefore, I find that the WSA has not demonstrated that section 16(c) of the FOIP Regulations authorized the disclosure of the Complainant's personal information to the Town.
- [26] Section 16(g)(i) of the FOIP Regulations speaks to the disclosure of personal information where the information pertains to the performance of any function or duty or the carrying out of any responsibility by an officer or employee *of a government institution*. The Town is not a "government institution". Therefore, without an explanation from the WSA, it is unclear how the Complainant's personal information would pertain to the function or duty or the carrying out of any responsibility by an officer or employee of a government institution. I find that the WSA has not demonstrated that section 16(g)(i) of the FOIP Regulations authorized the disclosure of the Complainant's personal information to the Town.
- [27] As the WSA has not demonstrated it had authority to disclose the Complainant's personal information to the Town, I find that a privacy breach has occurred.
- [28] I recommend that the WSA implement policies and/or procedures so that its employees have established their authority under FOIP prior to disclosing an individual's personal information to a separate entity.
- [29] I recommend that the WSA ensure that the employees involved in this matter have been trained to ensure they have authority under FOIP prior to disclosing an individual's personal information to a separate entity.
- [30] I recommend that the WSA send a letter to the Complainant apologizing for breaching their privacy. This letter should also include a description of the steps the WSA has taken to prevent similar privacy breaches in the future.

III FINDINGS

[31] I find that I have jurisdiction.

[32] I find that personal information is involved.

[33] I find that the WSA has not demonstrated that section 29(2)(o)(ii) of FOIP authorized its disclosure of the Complainant's personal information.

[34] I find that the WSA has not demonstrated that section 16(c) of the FOIP Regulations authorized the disclosure of the Complainant's personal information.

[35] I find that the WSA has not demonstrated that section 16(g)(i) of the FOIP Regulations authorized the disclosure of the Complainant's personal information.

[36] I find that a privacy breach has occurred.

IV RECOMMENDATIONS

[37] I recommend that the WSA implement policies and/or procedures so that its employees have established their authority under FOIP prior to disclosing an individual's personal information to a separate entity.

[38] I recommend that the WSA ensure that the employees involved in this matter have been trained to ensure they have authority under FOIP prior to disclosing an individual's personal information to a separate entity.

[39] I recommend that the WSA send a letter to the Complainant apologizing for breaching their privacy. This letter should also include a description of the steps the WSA has taken to prevent similar privacy breaches in the future.

Dated at Regina, in the Province of Saskatchewan, this 25th day of November, 2021.

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