



## **INVESTIGATION REPORT 186-2022**

### **Saskatchewan Human Rights Commission**

**November 21, 2022**

#### **Summary:**

The Saskatchewan Human Rights Commission (SHRC) received a complaint alleging that it had inappropriately shared the Complainant's access to information request forms with all SHRC staff. The SHRC responded by denying that a privacy breach had occurred. The Complainant asked the Commissioner to investigate the incident. The Commissioner found that SHRC had authority to share the Complainant's name and some details about their access to information request. However, SHRC did not have authority to share the Complainant's contact details, signature and request for a fee waiver. The Commissioner recommended that SHRC ensure that staff and officials who did not reasonably require complete copies of the Complainant's access to information request forms destroy and/or delete the forms. The Commissioner also recommended that SHRC develop policies on processing access to information requests and that the policies include requirements to protect applicants' personal information. He also recommended that SHRC ensure that all staff and officials involved with processing access to information requests are made aware of the requirements under the policies and *The Freedom of Information and Protection of Privacy Act* to protect applicants' privacy.

#### **I BACKGROUND**

- [1] On July 29, 2022, the Complainant emailed the Saskatchewan Human Rights Commission (SHRC) alleging that it had breached their privacy. They explained that the breach occurred when SHRC sent copies of the Complainant's two access to information requests forms to "an extensive mailing list within" SHRC.

- [2] By September 5, 2022, SHRC had not responded to the Complainant. On September 5, 2022, the Complainant filed an [Alleged Breach of Privacy Form](#) with our office. In the form, the Complainant stated that their access to information requests were “shared in their entirety” including all their personal details and explanations, “with the entire organization.”
- [3] On September 8, 2022, SHRC responded to the Complaint confirming receipt of the complaint. SHRC stated that, given the nature of the requests, it was necessary to share the access to information request forms with all SHRC staff to ensure a complete search for records.
- [4] On September 22, 2022, my office sent a Notice of Investigation to SHRC and the Complainant. The notification asked SHRC to prepare a [Privacy Breach Investigation Questionnaire](#) (Questionnaire). It also asked SHRC to provide a submission addressing whether it was reasonably necessary to share the Complainant’s access to information request forms. It also asked SHRC to address whether the sharing resulted in a privacy breach. The notification invited the Complainant to provide a submission in support of their position that a breach had occurred.
- [5] SHRC provided its completed Questionnaire and submission on October 24, 2022. The Complainant did not provide a submission.

## **II DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction?**

- [6] SHRC qualifies as a “government institution” pursuant to subsection 2(1)(d)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and section 3 and Part I of the Appendix to the FOIP Regulations. Therefore, I have jurisdiction to review this matter.

**2. Is personal information involved?**

[7] For FOIP to apply, the alleged breach must involve personal information. Subsection 24(1) of FOIP defines personal information as information that is identifiable and personal in nature. Subsection 24(1) of FOIP also includes a non-exhaustive list of examples of what is included within the definition. Subsections 24(1)(e) and (k)(i) of FOIP are relevant here. Those 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

...

(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; or

[8] SHRC’s Questionnaire acknowledged that the Complainant’s address and telephone number, which appeared on both access to information request forms, qualify as personal information. I agree. This information qualifies as the Complainant’s personal information pursuant to subsection 24(1)(e) of FOIP.

[9] However, the forms also include the Complainant’s name, email address, information about the scope of their requests, requests for a fee waiver and signature. A name alone would not normally qualify as personal information. However, when it is connected with an access to information request that an individual filed in their personal capacity, it reveals information that is personal in nature and is identifiable. In these circumstances, subsection 24(1)(k)(i) of FOIP would apply.

[10] I note that this is consistent with findings made in my office’s [Investigation Report 278-2017](#). My office’s *Guide to FOIP* describes the findings made in this Report as follows:

In Investigation Report 278-2017, the Commissioner considered a privacy breach complaint from an individual who had sent an access to information request to SaskPower. SaskPower then sent a briefing note to the Minister responsible for SaskPower. The briefing note contained details about the access to information request and included the applicant's first and last name. Upon investigation, the Commissioner found that the name of an applicant was personal information and referred to previous Review Reports LA-2012-002, 156-2017 and 267-2017.

(*Guide to FOIP*, Chapter 3: "Access to Records", updated: June 29, 2021, [*Guide to FOIP*, Ch. 3]) at pp. 5 – 6)

- [11] This approach is also consistent with findings of the Ontario Information and Privacy Commissioner's office. For example, in [Order PO-2488](#), Adjudicator Loukidelis considered whether a briefing note containing a requester's name, address, and information about the nature of their access to information request was the requester's personal information. The adjudicator described findings in previous reports then stated:

Having considered the appellant's submissions on this issue, I can see no justification for varying the approach taken in past orders and privacy reports of this office which stand for the principle that **the identity of a requester satisfies the definition of personal information for the purposes of the Act. In my view, the original requester's name and other related contact details contained in the responsive record qualify as that individual's personal information under both paragraphs (d) and (h) of the definition of "personal information" in section 2(1) of the Act. Under paragraph (h), disclosing the individual's name reveals the fact that they made a request under the Act. The details of the request are then also associated with the individual, with the result that disclosing the name reveals "other personal information" about the original requester.** I find, therefore, that the portions of the record at issue contain the personal information of the original requester.

[Emphasis added]

- [12] For the reasons described above, I find that the Complainant's name, address, email address, telephone number, signature and other information about their access to information requests qualify as their personal information pursuant to subsection 24(1) of FOIP.

**3. Did a privacy breach occur?**

[13] When a government institution collects, uses or discloses “personal information” without authority, a privacy breach occurs. I have already found that this incident involved personal information. Therefore, to determine if a privacy breach occurred, I must next decide if there was an unauthorized collection, use, or disclosure of that personal information.

[14] To “use” means to reference or manipulate personal information by the institution that has possession or control of the information. However, it does not include the disclosure to another separate entity (see my office’s [Review Report 395-2019](#), [396-2019](#) and [Investigation Report 262-2018](#)). To “disclose” means to share personal information with a separate entity, not a division or branch of the institution in possession or control of that record/information (see my office’s [Investigation Report F-2014-002](#)).

[15] SHRC acknowledged that it shared the Complainant’s personal information with all staff and officials within the organization.

[16] Given that SHRC shared the personal information at issue here with its staff and officials, the sharing qualifies as a use and not a disclosure. Therefore, I find that SHRC used the Complainant’s personal information.

[17] The authority to use personal information is set out in section 28 of FOIP. Subsection 28(a) of FOIP is relevant here and it provides:

**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:

(a) for the purpose for which the information was obtained or compiled, or for a use that is consistent with that purpose; or

[18] In addition to meeting the requirements in section 28 of FOIP, an institution must abide by the need-to-know and data minimization principles (see my office’s [Investigation Report 234-2020](#)). This means that personal information should only be available to those that

have a legitimate need-to-know the information for the purpose of delivering their mandated services. A requirement for data minimization is a requirement to collect, use or disclose the least amount of personal information necessary for the purpose.

[19] SHRC's submission asserted that it was authorized to share the access to information request forms with all staff by subsection 29(2)(a) of FOIP which applies to disclosures of personal information. As I have found that the internal sharing was a use, in the analysis that follows, I will consider if SHRC's use was authorized by subsection 28(a) of FOIP.

[20] SHRC stated that it distributed the access to information request forms to all Commission staff and officials, so that they could complete a thorough search for responsive records. It asserted that it was authorized to do this because the sharing was for the purpose for which the requests were obtained or for a consistent purpose.

[21] SHRC explained that considering the breadth of the access to information requests, all Commission staff and officials in the Saskatoon office had a need-to-know of the requests. It also stated that it only shared the information with individuals who qualified as either employees or officials of the Commission. Its submission asserted:

As the access to information requests sought disclosure of any documents in the possession of any Commission employees or officials referring to [the Complainant] by name or otherwise, the access to information request were then sent to the Commission's remaining 28 staff members by email so that they could review their records to ensure that any documents referring to [the Complainant] in their possession would be located.

[22] I note that the Complainant's access to information requests sought access to all records "written, issued, received or exchanged by employees and/or officials of the [SHRC] in which any reference is made" to the Complainant, by name or not, "including, but not limited to," the following named individuals. This meant that to complete a reasonable search for records, SHRC had to share with all Commission staff and officials the Complainant's name and a description of the records the Complainant sought access to.

[23] However, there was no need for all Commission staff and officials to know the Complainant's personal email address, residential address, telephone number, signature and request for a fee waiver. SHRC should have redacted this information from the forms before it shared the requests. It was not necessary to have this information to complete a thorough search for records. SHRC's decision to share this information with all its staff and officials did not comply with subsection 28(2)(a) of FOIP, and the need-to-know and data minimization principles. For these reasons, I find that a privacy breach occurred.

[24] I now turn to consider SHRC's response to the privacy breach.

#### **4. Did SHRC respond appropriately to the privacy breach?**

[25] As set out in my office's *Rules of Procedure*, when we determine that there has been a privacy breach, we will analyze whether the government institution appropriately managed the breach. We will also consider if it:

- Contained the breach (as soon as possible)
- Notified affected individuals (as soon as possible)
- Investigated the breach
- Took appropriate steps to prevent future breaches.

[26] SHRC denied that a privacy breach occurred and therefore, did not take any steps to contain or investigate it. Accordingly, I find that SHRC did not respond appropriately to the privacy breach.

[27] To contain the breach, I recommend that SHRC ensure that its staff and officials, other than the staff and officials who are reasonably required to retain complete copies of the Complainant's access to information request forms, delete and/or destroy any copies of the forms and personal information.

[28] Regarding a plan to prevent future breaches of this kind, SHRC's submission asserted:

The Commission is of the view there is no unauthorized practice. However, out of an abundance of caution, the Commission will redact the contact information from access to information request forms prior to distributing them to Commission staff tasked with searching their records.

[29] This is an important first step. However, it is not sufficient. SHRC advised that it does not have any policies guiding staff and officials on how to process access to information requests. To prevent future breaches of this kind, I recommend that SHRC develop policies on processing access to information requests and ensure that the policies include requirements to protect applicants' personal information.

[30] I also recommend that SHRC ensure that all staff and officials involved with receiving, processing and responding to access to information requests are made aware of their obligations under the policies and FOIP to protect applicants' privacy.

### **III FINDINGS**

[31] I find that I have jurisdiction to investigate this matter.

[32] I find that a privacy breach occurred.

[33] I find that SHRC did not respond appropriately to the privacy breach.

### **IV RECOMMENDATIONS**

[34] I recommend that SHRC ensure that its staff and officials, other than the staff and officials who are reasonably required to retain complete copies of the Complainant's access to information request forms, delete and/or destroy any copies of the forms and personal information within 30 days.

[35] I recommend that SHRC develop policies on processing access to information requests and ensure that the policies include requirements to protect applicants' personal information within 30 days.



[36] I recommend that SHRC ensure that all Commission staff and officials involved with receiving, processing and responding to access to information requests are made aware of their obligations under the policies and FOIP to protect applicants' privacy within 60 days.

Dated at Regina, in the Province of Saskatchewan, this 21st day of November, 2022.

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