



Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 200-2022

Saskatchewan Legal Aid Commission

May 15, 2023

Summary:

The Complainant was not satisfied with the Saskatchewan Legal Aid Commission's (SLAC) response to their privacy complaint, and asked the Commissioner to investigate. The Commissioner found that the Complainant's personal information is involved as defined by subsections 24(1)(e), (h) and (k) of *The Freedom of Information and Protection of Privacy Act*, and that a privacy breach occurred. The Commissioner recommended SLAC establish policies and procedures for determining when to disclose personal information to outside counsel. The Commissioner also recommended that SLAC send an apology letter to the Complainant within 30 days of the issuance of this Investigation Report.

I BACKGROUND

[1] On June 10, 2022, the Complainant submitted a privacy complaint to the Saskatchewan Legal Aid Commission (SLAC). The Complainant asserted that an employee from SLAC provided emails that contained their personal information to a lawyer contracted by SLAC to represent another individual (Person 1).

[2] On June 9, 2022, SLAC responded to the Complainant advising as follows:

When we receive information that someone may not be eligible for legal aid, we conduct an eligibility check. They may be asked specific questions about assets / income / employment that is provided as part of the complaint. However, they are not told who complained or that there was a complaint.

[3] On October 22, 2022, the Complainant asked my office to undertake an investigation as they were not satisfied with SLAC's response.

[4] On December 5, 2022, my office notified SLAC and the Complainant that my office would be investigating this matter.

[5] On January 4, 2023, SLAC provided a response to my office's notice of investigation.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[6] SLAC is a "government institution" as defined by subsection 2(1)(d)(ii) of FOIP and subsection 3(a) and Part I of *The Freedom of Information and Protection of Privacy Regulations*. Therefore, I find I have jurisdiction to undertake this investigation.

2. Did a privacy breach occur?

[7] In order for a privacy breach to occur, personal information as defined by subsection 24(1) of FOIP must be present. SLAC has taken the following position:

We reviewed the relevant provisions of [FOIP]. It is the position of [SLAC] that the information disclosed in the emails ... was not "personal information" as defined under Section 24 [of FOIP], and specifically Section 24(1)(g) of [FOIP] was not a breach of Section 29(1) [of FOIP].

[8] The information at issue is contained in two emails that was provided to the lawyer representing Person 1. The information in the emails is summarized as follows:

- One email is from the Complainant to SLAC. In the email, the Complainant provided financial and other details about Person 1 to SLAC.
- The other email is between SLAC employees and includes details about a phone conversation had with the Complainant regarding their concerns with Person 1's eligibility for Legal Aid.

[9] In order to qualify as personal information, the information must: 1) be about an identifiable individual; and 2) be personal in nature. Information is about an “identifiable individual” if the individual can be identified from the information (e.g., their name is provided) or if the information, when combined with information otherwise available, could reasonably allow the individual to be identified. To be “personal in nature” means the information provides something identifiable about the individual (*Guide to FOIP*, Ch. 6, pp. 32-33).

[10] Subsection 24(1) of FOIP provides examples of types of information that could be considered “personal information”. In this matter, subsections 24(1)(e), (h), (j) and (k)(i) and (ii) of FOIP are relevant. These subsections provide 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;

...

(h) the views or opinions of another individual with respect to the individual;

...

(j) information that describes an individual’s finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(k) the name of the individual where:

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

(ii) the disclosure of the name itself would reveal personal information about the individual.

[11] I will first consider if there is personal information pursuant to subsection 24(1) of FOIP.

Email 1

[12] The first email contains the name and email address(es) of the Complainant. In my office’s [Review Report 186-2019](#), my office outlined at paragraph [23] that personal email addresses qualify as personal information pursuant to subsections 24(1)(e) and (k) of FOIP.

Therefore, the personal email addresses in the first email qualify as the Complainant's personal information pursuant to subsections 24(1)(e) and (k) of FOIP.

[13] In the first email, the Complainant also provided financial and other details regarding Person 1's potential ineligibility to receive Legal Aid services. This includes their views or opinions on Person 1 and sources of income Person 1 has allegedly received.

[14] "Opinions" are views or judgements not necessarily based on fact or knowledge. "Views" are particular ways of regarding something; an attitude or opinion (*Guide to FOIP*, Ch. 6, p. 55).

[15] To clarify the meaning of subsection 24(1)(h) of FOIP, the views or opinions expressed by an individual about another individual are the personal information of the individual they are about. For example, an individual writes, "Smith is a bad student" or "Smith exercises but is still out of shape." The individual's opinion is about Smith so the opinion is Smith's personal information (*Guide to FOIP*, Ch. 6, p. 55).

[16] The views or opinions the Complainant expressed about Person 1, then, are Person 1's personal information pursuant to subsection 24(1)(h) of FOIP. In addition, the information that is included in the email is also financial information about Person 1. This qualifies as Person 1's personal information pursuant to subsection 24(1)(j) of FOIP.

Email 2

[17] The second email, which was internal to SLAC, contains six paragraphs. The majority of the email references a phone conversation had between SLAC and the Complainant where the Complainant discussed concerns with Person 1's eligibility for Legal Aid. This would qualify as Person 1's personal information pursuant to subsection 24(1)(h) and (j) of FOIP.

[18] Paragraph three is an opinion of a SLAC employee about the Complainant. This qualifies as the Complainant's personal information pursuant to subsection 24(1)(h) of FOIP.

[19] Therefore, I find that the Complainant's personal information is involved as defined by subsections 24(1)(e), (h) and (k) of FOIP. The Complainant's concern is that their personal information was disclosed; therefore, I will not consider if SLAC had the authority to disclose the personal information I have established is that of Person 1.

[20] I will next consider if SLAC had authority to disclose the Complainant's personal information. Subsection 29(1) of FOIP provides as follows:

29(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

[21] "Disclosure" is sharing of personal information with a separate entity, not a division or branch of the government institution in possession or control of that information. Section 29 of FOIP only applies to personal information as defined by section 24 of FOIP (*Guide to FOIP*, Ch. 6, p. 183).

[22] Section 30 of FOIP relates to the disclosure of personal information of a deceased individual, so is not at issue in this matter. Subsection 29(2) of FOIP provides an enumerated list of circumstances that gives a government institution authority to release information without consent of the subject individual.

[23] As noted, SLAC maintains that a breach of privacy did not occur because it concluded that personal information was not involved. As such, SLAC did not provide my office with its authority under FOIP to disclose this information to Person 1's lawyer.

[24] "Need-to-know" is the rule that personal information should only be available to those employees in an organization (or those contracted by one) that have a legitimate need to know that information for the purpose of delivering their mandated services (*Guide to FOIP*, Ch. 6, p. 16).

[25] As SLAC has not identified its authority to disclose the Complainant's personal information pursuant to subsection 29(1) of FOIP, and because it has not established why the contracted lawyer needed to know this information, I find a privacy breach occurred.

[26] SLAC stated, "we cannot state that it was necessary to provide [Complainant]'s email to outside counsel and there are no policies or procedures that would direct we do".

[27] Based on this, I recommend that SLAC establish policies and procedures for determining when to disclose personal information to outside counsel. In addition, I recommend that within 30 days of issuance of this Investigation Report, SLAC issue a letter of apology to the Complainant for breaching their personal information.

III FINDINGS

[28] I find I have jurisdiction to undertake this investigation.

[29] I find the Complainant's personal information is involved as defined by subsections 24(1)(e), (h) and (k) of FOIP.

[30] I find a privacy breach occurred.

IV RECOMMENDATIONS

[31] I recommend SLAC establish policies and procedures for determining when to disclose personal information to outside counsel.

[32] I recommend that within 30 days of the issuance of this Investigation Report that SLAC send a letter of apology to the Complainant for breaching their personal information.

Dated at Regina, in the Province of Saskatchewan, this 15th day of May, 2023.

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