

**SASKATCHEWAN  
INFORMATION AND PRIVACY COMMISSIONER**

**REVIEW REPORT 075/2012**

**FINANCIAL AND CONSUMER AFFAIRS AUTHORITY**

**Summary:** The Applicant submitted an access to information request to the Financial and Consumer Affairs Authority (FCAA). FCAA released some information but withheld the rest, citing subsections 17(1)(b)(i) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as reasons to withhold portions of the records. The Applicant appealed to the Information and Privacy Commissioner (IPC). In the course of the review, the IPC found that subsection 17(1)(b)(i) of FOIP did not apply. FCAA agreed to release the portions of the records it withheld under this subsection of FOIP. The IPC found that FCAA could continue to withhold some information under subsection 29(1) of FOIP but recommended that FCAA release some of the information it originally withheld, including the Applicant's own personal information.

**I BACKGROUND**

[1] On September 6, 2011, the Financial and Consumer Affairs Authority (FCAA), then known as the Financial Services Commission, received an access to information request for the following:

All documents, correspondence, emails, telephone notes and records pertaining to the SGEU Staff Pension Plan #GA.8366, including records of contact with any party pertaining to solvency shortfall and plan termination, from January 1, 2005 to present.

[2] FCAA wrote a letter dated November 30, 2011 to the Applicant stating it was releasing some of the third party records but that it was withholding portions of it pursuant to subsections 17(1)(b)(i) and 29(1) of FOIP.

[3] On November 30, 2012, my office received a Request for Review from the Applicant.

[4] My office wrote letters dated December 11, 2012 to the Applicant and the FCAA that the office would be undertaking a review.

## **II RECORDS AT ISSUE**

[5] The records at issue contain very specific details of members and their pension plan including (but not limited to) birthdates, hiring dates, termination dates, monthly pension payments, annuity costs, employee contributions and premiums.

## **III DISCUSSION OF THE ISSUES**

[6] FCAA qualifies as a “government institution” within the meaning of section 2(1)(d)(ii) of FOIP.

### **1. Did the Financial and Consumer Affairs Authority properly apply section 29(1) of *The Freedom of Information and Protection of Privacy Act*?**

[7] Section 29(1) of FOIP states the following:

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.

[8] In its submission dated February 15, 2013, FCAA asserted that the reason for withholding information under subsection 29(1) was that the combination of certain types of information would lead to the identification of individuals. I agree that public bodies must look at records as a whole, and not specific types of information, to determine if the release of any information could lead to the identification of individuals. When my office reviewed the records, though, it determined that once some information was redacted, the remainder of the information could be released without leading to the identification of any third party individuals. First, I will explain the reasons why certain types of

information would qualify as personal information and should be withheld under subsection 29(1) of FOIP. Second, I will discuss what type of information I found could be released.

**a. The reasons for why certain types of information should be withheld under subsection 29(1) of FOIP.**

[9] In the course of the review, my office and FCAA came to an agreement that certain types of information would qualify as personal information and should be withheld under subsection 29(1) of FOIP. Below is a list of these types of information and the reasons why they should be withheld.

1. Pension/survivor's number

[10] The records show that pension members (or the pensioner's survivor) are assigned a number from 1 to 90. Some of the records list the employee's name and number. I find that such information qualifies as personal information pursuant to subsection 24(1)(d) of FOIP.

2. Birth dates of pensioner and/or spouse

[11] Birth dates would qualify as personal information pursuant to subsection 24(1)(a) of FOIP. I find that such information can be withheld pursuant to subsection 29(1) of FOIP.

3. Member Form

[12] The term "Member Form" is the title of columns in tables in the records at issue. FCAA did not explain what these columns refer to. The Member Form is a combination of letters and numbers. For example, L10, L15, J60G15, and J60. My office reviewed the table in Records 1, 2, and 3. It determined the following:

- the Member Form L15 represented 17 pensioners and/or survivors,
- the Member Form L5 represented 1 pensioner and/or survivor,
- the Member Form L10 represented 8 pensioners and/or survivors,
- the Member Form J60G10 represented 2 pensioners and/or survivors,
- the Member Form J60G15 represented 2 pensioners and/or survivors,
- the Member Form J60G5 represented 1 pensioner and/or survivor,
- the Member Form J100 represented 1 pensioner and/or survivor,
- the Member Form J100G15 represented 11 pensioners and/or survivors,

- the Member Form J60 represented 2 pensioners and/or survivors.

[13] Some of the member forms represent a small cell size of individuals. A best practice followed by the Office of the Information and Privacy Commissioner of Ontario (Ontario IPC) is not to report on cell sizes of less than five (Ontario IPC Best Practices for Protecting Individual Privacy in Conducting Survey Research at pages 20 to 21). Because of the small cell sizes, I find that releasing member forms with a cell size of less than 5 could lead to the identification of individuals.

#### 4. Bridge Expiry

[14] The following definition of a bridge benefit appeared in several pages of the records that were released to the Applicant:

A bridge benefit of \$750 per month is payable from the later of the date of retirement and age 50. The bridge benefit is payable for a maximum of sixty months or to age 65 if earlier.

[15] Based on the above explanation, the Bridge Expiry date can assist an individual in determining the following:

- i. the person's date of retirement – by taking the expiry date and subtracting 60 months,
- ii. the person's 50<sup>th</sup> birthday – by taking the expiry date and subtracting 60 months, or
- iii. the Bridge Expiry date might actually reflect the individual's 65<sup>th</sup> birthday.

[16] Individuals can easily be identified using the bridge expiry date. I find that this information would qualify as personal information pursuant to subsection 24(1).

#### 5. Hiring/Termination dates

[17] Hiring and termination dates would qualify as personal information pursuant to subsection 24(1)(b) of FOIP since it describes a person's employment history.

#### 6. Member Retirement dates

[18] A person's retirement date is similar to a person's termination date. Therefore, I find that a person's retirement date would qualify as personal information pursuant to subsection 24(1)(b) of FOIP.

7. Age at wind-up

[19] A pension member's age at the time that the time of the pension's wind-up would qualify as personal information pursuant to subsection 24(1)(a) of FOIP.

8. Names

[20] A person's name, where it appears with other information about the individual, would qualify as personal information pursuant to subsection 24(1)(k)(i). My office recommended that FCAA de-identify the records at issue by removing some information and releasing the remainder. I find that releasing names would undermine any de-identification efforts.

9. Member Pension Start date

[21] My office initially recommended that the pension start date of members should be released. The Member Pension Start date is presumably the date in which a pension member became eligible to receive monthly pension benefits. Several pages of the records released to the Applicant explained the following about retirement dates:

Normal retirement date is attainment of age 60. Early retirement is permitted after attaining age 50, or completing 30 years of service or when age plus service equal at least 80. If the member has completed 30 years of service or age plus service equal at least 80, the pension is unreduced. Otherwise, the pension is the actuarial equivalent to the pension payable at normal retirement date.

[22] If the member's pension start date is determined by the above criteria set out in the quote, then it would be quite difficult to identify a single individual. The member's start date can mean a member's attainment of age 60, or a member's attainment of early retirement at age 50 (or completed 30 years of service), or that a member's age plus years of service equals 80. Since it is difficult to identify an individual based solely on the "member's pension start" (not in combination with any other information), my office initially found that it is not "personal information" as defined by section 24(1) of FOIP.

[23] In its letter dated May 29, 2014, FCAA disagree with this recommendation because the pension start date would enable one to determine the retirement date of the member,

which could lead to the identification of individuals. Further, it argued that because the pension plan membership was small (90 members), and that only one or two retirements occurred every year, it would be likely that the Applicant would be able to identify the individual if the pension start date was revealed. I have been persuaded by FCAA's arguments and I am in agreement that the member pension start date should be withheld under subsection 29(1) of FOIP.

10. Employee contribution markedly higher than others

[24] In its letter dated May 29, 2014 to my office, FCAA raised concerns with the release of information regarding one pension member whose contributions were markedly higher than others. Even after removing the identifiable information listed above, this employee's contribution would identify him or her. FCAA suggested it should redact this pension member's employee contributions pursuant to subsection 29(1) of FOIP. I agree with FCAA's suggestion.

**b. What information should be released**

[25] The Applicant's own personal information is in the records at issue. Initially, the Applicant's own personal information was withheld under subsection 29(1) of FOIP. Subsection 29(1) of FOIP would only be applicable to personal information that was about third party individuals, not the Applicant. My office recommended that the Applicant's own personal information be released to the Applicant and FCAA agreed with the recommendation.

**2. Did the Financial and Consumer Affairs Authority properly apply section 17(1)(b)(i) of *The Freedom of Information and Protection of Privacy Act*?**

[26] FCAA withheld handwritten comments that were along the margins of a typed draft version of the report about the termination of a pension plan under subsection 17(1)(b)(i) that appear in Record 8. Subsection 17(1)(b)(i) of FOIP reads as follows:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...  
(b) consultations or deliberations involving:

- (i) officers or employees of a government institution;

[27] First, in order for subsection 17(1)(b)(i) to apply, the information must qualify as a consultation or deliberation. A consultation occurs when the views of one or more officers or employees of a government institution are sought as to the appropriateness of a particular proposal or suggested action. A deliberation is a discussion of the reasons for and against an action by the persons described in this section. Then, if the information qualifies as a consultation or deliberation, then a three-part test must be met. The consultation or deliberation must be:

1. either be sought or expected, or be part of the responsibility of the person from whom they are sought;
2. be sought for the purpose of doing something, such as taking an action or making a decision; and
3. involve someone who can take or implement the action.

[28] My office's review of the records found that the handwritten comments did not qualify as consultations or deliberation and could not be withheld under subsection 17(1)(b)(i). FCAA agreed and released the information it initially withheld under this particular subsection.

## **V FINDINGS**

[29] I find that FCAA has released as much information it can while protecting the privacy of third party individuals.

## **VI RECOMMENDATIONS**

[30] I recommend that FCAA continue to withhold third party personal information as described in this Review Report.

Dated at Regina, in the Province of Saskatchewan, this 8th day of October, 2014.

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