

MARCH 24, 2005

FILE NO. – 2004-029

SASKATCHEWAN

OFFICE OF THE

INFORMATION AND PRIVACY COMMISSIONER

REPORT 2005 – 001

Saskatchewan Labour

Summary: The Applicant applied under *The Freedom of Information and Protection of Privacy Act* (the “Act”) for access to records relating to a specific industrial accident in the possession or control of a government institution. The government institution provided access to all responsive documents, but withheld certain severed data elements invoking section 29 of the Act. The government institution’s submission claims that while some of the severed information constitutes personal information under section 24 of the Act, others severed constitutes personal health information under section 2(m) of *The Health Information Act* (“HIPA”). The Commissioner upheld the denial of access to some of the severed data elements under the Act, but not those claimed as exempt under HIPA.

Statutes Cited: *The Freedom of Information and Protection of Privacy Act* [S.S. 1990-91, c. F-22.01 as am], s. 24(1)(a)(b)(d)(e)(k), s. 29; *The Freedom of Information and Protection of Privacy Regulations*, c. F-22.01 Reg. 1, *Health Information Protection Act*, S.S. 1999, H-0.021, s. 2(m)

Authorities Cited: Saskatchewan OIPC Reports: 2004-003, 93/029 and 2003/014; British Columbia Order: 03-21; Ontario Orders: M-26; Ontario Investigative Report: 193-075P; Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police), 2003 SCC 8.

I BACKGROUND

- [1] The Applicant submitted an Access to Information request to Saskatchewan Labour (“Labour” or “the government institution”), wherein he requested the following:

“...I’m seeking information through your office on a flood at Cameco Corporation’s McArthur River uranium mine in Saskatchewan that began in April, 2003. Please find an attached newspaper article outlining the basics of this incident.

My access request applies specifically to Saskatchewan Labour.

I would like access to all records about, but not limited to, Cameco employee exposure to radon gas and/or any other forms of radiation. Please include records, documents, reports, correspondence, emails, sticky notes, handwritten notes, and ministerial briefing notes from April, 2003 to present.”

- [2] Labour replied to the Applicant’s request by letter dated April 15, 2004 indicating:

“Your recent request for access to information has been partially granted. The reports related to the specified accident are attached. Other information has been withheld under section 29 of The Freedom of Information and Protection of Privacy Act (attached).”

- [3] On June 21, 2004, the Applicant requested that we review the decision of Labour. Our office advised Labour on June 28, 2004 that we would undertake a review pursuant to *The Freedom of Information and Protection of Privacy Act*.

- [4] Labour provided our office with copies of the released 30 documents in unsevered form for our review. Labour also provided a written submission dated July 14, 2004. The submission states, in part:

“Further to your request of June 28, 2004, and the Applicant’s request for a review under The Freedom of Information and Protection of Privacy Act, please find enclosed:

- a) a copy of the original access request form provided to Saskatchewan Labour by the Applicant;*
- b) a copy of the documents sent to [the Applicant] in the condition which they were sent;*
- c) a copy of the documents in which items were blacked out. The blacked out areas have been shaded.*

Information was blacked out on the basis that the names, telephone numbers, identifying company number, and Social Insurance Number of workers is personal information pursuant to section 24(1)(c)(d) of the Act. The names of the workers were particularly blacked out as they were contained in documents where the level of radiation exposure of each worker was set out adjacent to the names of each worker. The level of a particular worker's exposure to radiation was considered personal health information pursuant to section 24(1)(c) of The Health Information Protection Act, 2003."

[5] We sought clarification from Labour as the exemption claim under FOIP, since section 24(1)(c) has been repealed, and there is no section 24(1)(c) or (d) under HIPA.

[6] On September 21, 2004, Labour clarified its position as follows:

"...Within the documents provided to the Applicant, we withheld or blocked out all employee numbers and social insurance numbers of individual workers. These numbers were withheld on the basis of section 29(1) and 24(1)(d) of The Freedom of Information and Protection of Privacy Act as being personal information.

We also withheld by blocking out the direct phone number of an individual worker pursuant to section 29(1) and 24(1)(e) of FOIP.

Lastly, we withheld the names of individual workers where they were clearly identified with the workers' measured individual radiation exposure. The names were withheld in compliance with our duty as a Trustee under section 5(2) of The Health Information Protection Act (HIPA), on the basis that an individual's radon exposure is personal health information within the meaning of section 2(m) of HIPA. We consider the amount of radon to which a worker is exposed to be a matter that relates to the physical and mental health of an individual as it can and is perceived to be a factor that affects a person's health.

In addition, the names of the workers were also withheld under section 29(1), 24(1)(b) and 24(1)(k) on the basis that since the exposure occurred in the course and on account of employment, it is information that relates to an individual's employment history. In the documents the name of each individual worker was clearly related or identified with that individual's radiation exposure.

It should be noted that we did not withhold the heading under which the names were listed. The edited documents would still be capable of being understood as being the measured exposures of all the individual workers underground, even though they are not individually identified."

II RECORDS AT ISSUE

[7] In its July 14, 2004 response to the Applicant's request, Labour explains how they split the records into two packages. The letter reads as follows:

“b) a copy of the documents sent to the Applicant in the condition in which they were sent;

c) a copy of the documents in which items were blacked out. The blacked out areas have been shaded.”

[8] As the Applicant received the first package referenced as “b)” above, they are not at issue in this review.

[9] Only the severed data elements, contained within the records of the second package “c)” are the focus on this review. The different types of documents described in “c)” with severed data elements are as follows:

1. A table totally 20 pages entitled, *“Quarterly Exposure Report for McArthur River Operations, for the second quarter of 2003”* including the following data elements: worker identification number; worker name; Social Insurance Number of each worker; and various values specific to radon exposure levels/quarter/year/dose. Severed data elements include the following: all employee names, employee numbers, and Social Insurance Numbers (SIN).
2. Tables 1-4 with employee names and testing results listed totalling 8 pages. Labour severed only the employee names from the documents released.
3. Field handwritten notes consisting of one page. The only severed information is one phone number for an employee with the Saskatoon office. The employee's name is unaltered, but the phone number is masked. Above the severed phone number is the phone number of another individual that is left unmasked.
4. A one-page fax transmission sheet with only one line item severed: the direct telephone number of what appears to be an employee. The name of the individual and direct fax number is not masked.

III ISSUES

Did Saskatchewan Labour properly invoke section 29 of *The Freedom of Information and Protection of Privacy Act* to deny access?

Did Saskatchewan Labour properly invoke section 2(m) of *The Health Information Protection Act* to deny access?

IV DISCUSSION OF THE ISSUES

Did Labour properly invoke section 29 of the *Freedom of Information and Protection of Privacy Act* to deny access?

[10] The section reads as follows:

“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.”

[11] If section 29 is to apply, then the data elements severed must meet the definition of personal information under section 24(1) of the Act.

(a) Is the severed information (phone numbers, worker’s names, employee numbers, and SIN) personal information as defined by section 24 of FOIP?

[12] The definition of “personal information” in the Act is expansive [section 24]. It includes 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...; (d) any identifying number, symbol or other particular assigned to the individual, other than the individual’s health services number as defined by *The Health Information Protection Act*; (e) the home or business address, home or business telephone number or fingerprints of the individual; 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.”*

[13] Section 24 was considered by a previous Saskatchewan Commissioner in Report No. 2003/014. Page 10 of that Report reads, "...Pursuant to section 24(1)(k), the name by itself is not personal information."

[14] Order M-26 issued by the Ontario Information and Privacy Commissioner considered the issue of whether an Applicant should be able to access, "the names of all students who were awarded spring and summer jobs by the regional municipality in 1990 and to date in 1991". The Order reads, in part, as follows:

In part, personal information is defined in section 2(1) of the Act as follows:

personal information" means recorded information about an identifiable individual, including,

...

(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

...

The institution claims that the names which appear in the record constitute personal information because disclosure of the names would reveal other personal information about the individuals (i.e. the fact that they were hired for temporary or part-time jobs) within the meaning of subparagraph (h) of the definition of personal information. I agree with the institution's position.

...

Section 14 of the Act prohibits the disclosure of personal information except in certain circumstances. Specifically, section 14(1)(f) of the Act reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except, if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 14(4) of the Act identifies particular types of information, the disclosure of which does not constitute an unjustified invasion of personal privacy. Section 14(4)(a) reads: Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it, discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution; If a record contains the type of information described in section 14(4), the exception to the section 14 exemption contained in section 14(1)(f) will apply [Order M-23].

In its representations, the institution submits that section 14(4)(a) does not apply to the names which appear in the record.

In my view, it is significant that the words "of an individual" appear in section 14(4)(a). These words precisely reflect the fact that section 14 is directed to personal information which, by definition, is information about an identifiable individual. Therefore, in my opinion, section 14(4)(a) applies to the names of individuals who are or were employed by the institution. Accordingly, the disclosure of the names would not constitute an unjustified invasion of personal privacy...

*...I order the institution to **disclose to the appellant the names of temporary and part-time employees**, including those who have been hired for summer jobs, for the period of 1990 until May 17, 1991."*

[15] In the case of this review, the names of employees are severed from some of the responsive records, but only when linked with other data elements.

(b) The name of an individual employee may not constitute personal information on its own, but would it if linked to other data elements that constitute personal information under the Act?

[16] Labour argues that section 24(1)(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*] applies to the severed items as described in paragraph [12]. Not all the severed data elements are linked directly to an individual worker's name.

[17] As earlier stated in Labour's submission to our office, "*In addition, the names of the workers were also withheld under section 29(1), 24(1)(b) and 24(1)(k) on the basis that since the **exposure occurred in the course and on account of employment**, it is information that **relates to an individuals employment history**. In the documents the name of each individual worker was clearly related or identified with that individual's radiation exposure."*

- [18] Labour asserts that radon exposure should be considered in fact the personal information of each worker.
- [19] If the employee number constitutes personal information under the Act, we have to look at section 24(1)(b) and (d)[“(b) information that relates to the education or the criminal or employment history of the individual or information...; (d) any identifying number, symbol or other particular assigned to the individual, other than the individual’s health services number”] of the Act.
- [20] British Columbia’s Office of the Information and Privacy Commissioner considered the issue of the employee’s file number in Order 03-21. The Order reads:

*“...This information in dispute about each individual is, again, the following: **employee file number, employee name, employee hire date and type (hire or transfer), employee termination date and employment status. The employee’s file number is a particular identifier assigned to the employee is thus that individual’s personal information. In my view, that information, and the other data elements just described, all qualify as “employment history” of each individual.***

*It should be noted here, in passing, that my finding in this case, like the finding in Order 01-46, relates to the **employment history of individuals who are not employees or officers of a public body.** Quite apart from s. 22(4)(e) of the Act, it is my view that **different considerations almost certainly will apply under** s. 22 to a **request for the names of employees of a public body.** It is difficult to see how, in general, the disclosure of **a list of the names of a public body’s employees would be an unreasonable invasion of their personal privacy.** The same can be said, as it has been before, about disclosure of an individual’s name in the context of performing work functions. For example, it is unlikely that, in general, disclosure of the name of a public body employee who wrote a particular report would unreasonably invade that individual’s personal privacy. See, generally, the Supreme Court of Canada’s approach to related issues under the federal Privacy Act in its recent decision in *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*, 2003 SCC 8.” [26-27]*

- [21] Further, in the court decision referenced above, para [25] reads as follows:

*“In my view, there is no reason to limit the scope of the expression “employment history” to particular aspects of employment or to modify its usual meaning. Parliament referred broadly to “employment [page 83] history” and did not qualify the expression. There is no evidence of an intent to limit its meaning. Further, the wording of s. 3(b) suggests that it has a broad scope. Indeed, the provision does not state that personal information includes “employment history” itself. Rather, it stipulates that it includes “information relating to...employment history” (emphasis added). Black’s Law Dictionary (6th ed. 1990) defines the word “**relate**” at p. 1288 as “**to bring into association with or connection with...**”*

[22] With these authorities cited, it would appear that the employee number is employment history and when linked with the employee's names falls within section 24 of the Act.

[23] Ontario Investigation Report 193-075P concludes that a SIN is personal information. It reads, in part, as follows:

*“Section 2(1) of the Act defines “personal information”, in part, as:
recorded information about an identifiable individual, including,*

...

(c) any identifying number, symbol or other particular assigned to the individual,

...

It is our view that the information in question – the SIN, met the requirements of paragraph (c) of the definition “personal information”, in section 2(1) of the Act.”

[24] The SIN is personal information under this section of the Act and it was appropriate to sever before releasing the records to the Applicant.

[25] The final data element to consider is whether the severed phone numbers are personal information as defined under the Act.

[26] Labour's contention is as follows:

“We also withheld by blocking out the direct phone number of an individual worker pursuant to section 29(1) and 24(1)(e) of FOIP.”

[27] Labour's application of this section is inconsistent since some phone numbers are left untouched and were released to the Applicant, yet two other phone numbers were severed and withheld.

[28] Our office considered a section 29 exemption claim in Report, No. 93/029 issued by Derril G. McLeod, Q.C. on February 11, 1994. It reads, in part:

“...They have refused to disclose the address, telephone and fax number for each of these individuals pursuant to section 29 of FOIP...In a conversation with the Access for the Ministry, Mr. Lynn McCaslin, it was made clear that access was not being sought to the home address, telephone and fax number, but rather, we were seeking access to relevant “business” address for these individuals...

...The question in issue here is **whether these addresses and telephone numbers should be characterized as personal information within the meaning of the Act.** It is a fair assumption that they may coincidentally be the home or business address or telephone number of some of the individuals concerned, but in the circumstances this information is provided to the Department and is recorded by them not with respect to the personal affairs of the individuals concerned, nor indeed with respect to the business or profession in which they are engaged. **This information is recorded in connection with a government program administered by the Department in which the public has an interest.**

If “personal information” is claimed as an exemption it should not be just any information about an individual, **it must be personal in the sense that it is private and that it is or should be treated as confidential** so that disclosure would amount to an invasion of privacy or a breach of confidence. This general principle should apply as well to information specifically enumerated in section 24(1)(a) to (k) as to any other information about an individual.

The Act, in my view, should not be taken to say that names, addresses and telephone numbers of individuals in government records must never be disclosed. Rather, it requires that such information must not be disclosed if the protection of privacy of an individual so requires. Individuals engaged in discharging public functions obviously **do not have the same expectation of privacy when so doing as when they are going about their personal or private affairs.**

Accordingly, while the addresses and telephone numbers in question may coincidentally be either a home or business address or telephone number of at least some of the individuals in question, they are, in the context and circumstances with which I am dealing, **the address and telephone numbers of persons holding public offices, and as such should not be characterized as “personal information”...**

Consequently, it is my **recommendation that the Department should disclose its record of the addresses and telephone numbers of the individuals in question to the Applicant.**”

- [29] We adopt the same conclusion that the names of employees of a government institution and their respective work phone numbers are not personal information under the Act.
- [30] I find that section 29(1) and 24(1)(e) do not operate to warrant severing those described in paragraph [12](3) & (4).
- [31] Section 29 limits disclosure of personal information to cases where the individual has provided consent or to one of approximately 22 different circumstances where disclosure can be made without consent.

[32] As the telephone numbers of employees are not personal information, I find the application to deny access to the Applicant based upon section 29 of the Act is improper.

Did Saskatchewan Labour properly invoke section 2(m) of *The Health Information Protection Act* to deny access?

(a) Is the department of Labour a “trustee” for purposes of *The Health Information Protection Act*?

[33] A trustee is defined in section 2(t) as “...*any of the following that have custody or control of personal health information: (i) a government institution*”.

[34] In section 2(h) of HIPA, a government institution is defined as “a government institution as defined in *The Freedom of Information and Protection of Privacy Act*.”

[35] In section 2(2)(d) of the FOIP Act, “government institution” means, subject to subsection (2):

*(i) the office of Executive Council or **any department**, secretariat, or other body, or any prescribed portion of a board, commission, Crown corporation or other body, whose members or directors are appointed, in whole or in part:*

(A) by the Lieutenant Governor in Council;

(B) by a member of the Executive Council; or

(C) in the case of:

(I) a board, commission or other body, by a Crown corporation; or

(II) a Crown corporation, by another Crown corporation;”

[36] *The Freedom of Information and Protection of Privacy Regulations*, c. F-22.01 Reg 1, provides as follows:

3 For the purposes of subclause 2(1)(d)(ii) of the Act:

(a) the bodies set out in Part I of the Appendix; and

(b) subsidiaries of government institutions that are Crown corporations;

are prescribed as government institutions.”

[37] Part I of the Appendix to the Regulation includes Saskatchewan Government Insurance in the list of “*Boards, Commissions, Crown Corporations, and Other Bodies Prescribed as Government Institutions*”.

[38] I find that Labour is a trustee for purposes of *The Health Information Protection Act* (HIPA).

(b) Is this personal health information within the meaning of *The Health Information Protection Act*?

[39] The names of the individuals (employees) were severed from the record, not the measured levels of radon exposure.

[40] The definition of personal health information appears in section 2(m) as follows:

2 In this Act:

(m) “*personal health information*” means, with respect to an individual, whether living or deceased:

(i) **information with respect to the physical or mental health of the individual;**

(ii) *information with respect to any health service provided to the individual;*

(iii) *information with respect to the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;*

(iv) *information that is collected:*

(A) *in the course of providing health services to the individual; or*

(B) *incidentally to the provision of health services to the individual; or*

(v) *registration information;*

- [41] Labour argues that radon exposure should be considered personal health information. They submit the following:

“Lastly, we withheld the names of individual workers where they were clearly identified with the worker’s measured individual radiation exposure. The names were withheld in compliance with our duty as a Trustee under section 5(2) of The Health Information Protection Act (HIPA), on the basis that an individual’s radon exposure is personal health information within the meaning of section 2(m) of HIPA. We consider the amount of radon to which a worker is exposed to be a matter that relates to the physical and mental health of an individual as it can and is perceived to be a factor that affects a person’s health.”

- [42] This section of HIPA reads, “...information with **respect** to the physical or mental health of the individual.” It does not mention the word “affects” or mention anything about “**a factor that affects**” a person’s health. The radon level is an environmental factor. It may well affect health but is not personal health information.

- [43] I find that the information involved in this complaint does not constitute “personal health information” in that it does **not relate** to the physical and mental health of the workers, **does not relate** to health services provided to the workers and is not information that **was collected in the course of providing health services** to the workers **or incidentally** to the provision of health services to those individuals.

- [44] A connection between environment and health may exist, but I can only conclude that the “*measured levels of radon exposure in a worker*” is **NOT** the personal health information of each worker.

- [45] I have determined that the information in question is not personal health information of the individuals identified, thus HIPA does not apply to the information in question.

V RECOMMENDATIONS

- [46] My finding is that the access request would require the disclosure of personal information and that Labour properly invoked the exemption in section 29 to deny access to the following data elements: SIN; employee number and individual levels of radon exposure when linked to employee names.

[47] Labour has not met the burden of proof to justify denying access to the work phone numbers of employees of a government institution. I recommend that Labour provide the Applicant with access to those severed workers' phone numbers.

[48] I find that “*measured levels of radon exposure of workers*” is not personal health information within the meaning of section 2(m) of *The Health Information Protection Act*. Consequently, there was no proper basis for Labour to withhold the radon exposure levels of workers under HIPA.

[49] Dated at Regina, in the Province of Saskatchewan, this 24th day of March, 2005.

R. GARY DICKSON, Q.C.
Information and Privacy Commissioner for Saskatchewan