



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 277-2017

Ministry of Corrections and Policing

May 14, 2018

Summary:

The Ministry of Justice received an access to information request from the Applicant for records pertaining to another individual (the subject individual). The Applicant provided the Ministry of Justice with a letter signed by the subject individual consenting to the disclosure of personal information. In response, the Ministry of Justice provided a letter to the Applicant asking for further details regarding the subject individual's consent. The Commissioner found that the consent provided by the Applicant did not meet the consent provisions found in *The Freedom of Information and Protection of Privacy Regulations*. The Commissioner recommended that the Ministry try to work with the Applicant and the subject individual to obtain an informed consent.

I BACKGROUND

- [1] On September 14, 2017, the Ministry of Justice received an access to information request where the Applicant requested “all records, regarding [name of another individual]”. The request also included the birthdate of the other individual (the subject individual). The Applicant provided the Ministry of Justice with a copy of a letter from the subject individual, dated December 5, 2016, granting the Applicant permission to receive any information about the subject individual.

[2] On October 16, 2017, the Ministry of Justice provided a letter to the Applicant. In the letter, it indicated that responsive records would include the personal information of the subject individual. The Ministry of Justice also indicated that the consent letter written by the subject individual was too general. The Ministry of Justice's letter requested that the Applicant provide more specific consent from the subject individual and listed what elements would be required as part of that consent. The letter also requested that the subject individual indicate where the Ministry of Justice should search for records.

[3] On November 3, 2017, the Applicant requested a review by my office. On November 7, 2017, my office provided notification to both the Ministry of Justice and the Applicant of my intention to undertake a review.

II RECORDS AT ISSUE

[4] There are no responsive records to review at this time.

III DISCUSSION OF THE ISSUES

[5] The Ministry of Justice, as it was at the time of the access request, qualified as a government institution. The Ministry of Justice was re-organized and split into the Ministry of Justice and Attorney General and the Ministry of Corrections and Policing (the Ministry) which qualifies as a government institution pursuant to subsection 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

1. Did the Ministry have the subject individual's consent to disclose personal information to the Applicant?

[6] The Ministry's letter of October 16, 2017 to the Applicant that records responsive to the request would qualify as the subject individual's personal information. The Ministry's submission indicated that, given the nature of the Applicant's request and the type of records held by the Ministry, it anticipated that any responsive records in its possession or

control would qualify as personal information pursuant to subsections 24(1)(a), (b), (e) or (k) of FOIP. Subsection 24(1) of FOIP provides:

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:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

...

(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

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

[7] Subsection 29 of FOIP provides:

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] Section 18 of the Regulations describes the type of consent that is required. Section 18, after January 1, 2018, provides:

18(1) If consent is required by the Act for the collection, use or disclosure of personal information, the consent:

(a) must relate to the purpose for which the information is required;

(b) must be informed;

(c) must be given voluntarily; and

(d) must not be obtained through misrepresentation, fraud or coercion.

...

(3) A consent may be given that is effective for a limited period.

(4) A consent may be express or implied unless otherwise provided.

(5) An express consent need not be in writing.

(6) A government institution, other than the government institution that obtained the consent, may act in accordance with an express consent in writing or a record of an express consent having been given without verifying that the consent meets the requirements of subsection (1) unless the government institution that intends to act has reason to believe that the consent does not meet those requirements

[9] Section 18 of the Regulation was changed by the amendments that came into force on January 1, 2018. However, it has always been a best practice for government institutions to obtain informed consent before disclosing personal information. Further, as a government institution, the Ministry would have been bound by a similar provision in *The Health Information Protection Act* (HIPA).

[10] Best practices for obtaining informed consent as noted in the *IPC Guide to HIPA* are as follows:

True consent must be informed consent. It is best practice that the subject individual understand:

- i) The specific personal health information to be collected, used or disclosed;
- ii) Anticipated uses and/or disclosures;
- iii) To whom the personal health information may be disclosed;
- iv) The date the consent is effective and the date on which the consent expires; and
- v) Any potential risks associated with the collection, use or disclosure.

[11] The consent provided by the Applicant on behalf of the subject individual is addressed to “whom it may concern” and states:

I, [name of subject individual], am writing to provide, consent for [name of the Applicant], to have access and be able to request any information with regard to my personal information/records.

I give to him, my authority to request, as well as receive any and all records, that may have my personal information, [the Applicant] may also sign documents on my behalf, when requesting same.

This is for all intents and purposes a full approval with my consent.

- [12] The consent was dated December 5, 2016 and signed.
- [13] I agree with the Ministry that the consent provided is too vague. Because the consent was not addressed specifically to the Ministry, the Ministry could not be sure that the subject individual understands that the consent was intended for the Ministry. Further, the Ministry could not be sure the subject individual understands what specific personal information was to be disclosed to the Applicant.
- [14] Also, the consent form was dated December 5, 2016 and the Applicant made the request almost 10 months later on September 14, 2017. The consent did not address the date the consent was effective and the date on which the consent expired. The Ministry had no way of knowing if the subject individual had reconsidered in that extended time period.
- [15] Finally, with only the vague signed letter of the subject individual, the Ministry had no way of knowing if the consent was given voluntarily or if it was obtained through misrepresentation, fraud or coercion.
- [16] In response, the Ministry asked that the Applicant provide more in terms of consent from the subject individual, including:
- the date the consent is effective and the date on which the consent expires;
 - specific types of personal information;
 - phone number of subject individual;
 - subject individual should identify specific records;
 - subject individual should identify which branches and areas of the Ministry to be searched and
 - photocopy of two pieces of identification that include address and signature.
- [17] It is reasonable for the Ministry to ask the subject individual to provide the date the consent is effective and the date on which the consent expires and specific types of personal information consented to. It is also reasonable to ask for the subject individual's phone

number. It is best practice for the Ministry to have as much direct contact as possible with the subject individual to ensure that informed consent has been given.

[18] It is not reasonable for the Ministry to ask the subject individual to identify specific records that can be disclosed to the Applicant. The subject individual should not be expected to identify specific records on their own. It is also unreasonable to ask the subject individual what areas or branches of a government institution should be searched.

[19] Finally, it is not reasonable to ask the subject individual to provide photocopies of two pieces of identification that include both an address and a signature. It is unlikely that all individuals have two pieces of identification that meet this criteria. The Ministry indicated that it followed a resource entitled *Verifying the Identity of an Applicant* created by Access and Privacy Branch of the Ministry of Justice and Attorney General. This resource recommends that two pieces of identification be required, but does not stipulate that both must contain an address and signature.

[20] There are multiple ways to confirm the identity of an individual. Service Alberta's resource *FOIP Bulletin – Consent and Authentication* indicates that the degree of authentication must be appropriate to the nature of the use or disclosure and the sensitivity of the personal information involved. I recommend the Ministry to work directly with the subject individual to find a mutually acceptable way to confirm identity in order to ensure that informed consent has been given. For more information about ways to confirm identity that meet best practices, I urge both the Ministry to consult the following resources:

- *Verifying the Identity of an Applicant* – APB;
- *FOIP Bulletin – Consent and Authentication* – Access and Privacy, Service Alberta; and
- *Guidelines for Identification and Authentication* – Office of the Privacy Commissioner of Canada.

[21] As noted above, the best practice would be for the Ministry to work directly with the subject individual to obtain informed consent and authenticate identity. In an attempt to reach informal resolution in this review, my office asked the Applicant to provide contact information for the subject individual for the purposes of suggesting that the subject

individual work with the Ministry to ensure informed consent. The Applicant was unwilling to do so. It is in the best interest of the Applicant to facilitate this connection between the subject individual and the Ministry.

IV FINDING

[22] I find that the Ministry does not have the informed consent of the subject individual to disclose personal information to the Applicant.

V RECOMMENDATIONS

[23] I recommend that the Ministry work with the Applicant to make contact with the subject individual.

[24] I recommend that the Ministry work directly with the subject individual to obtain informed consent within 30 days, if the subject individual still wishes to give consent.

[25] I recommend that the Ministry work with the subject individual to authenticate the subject individual's identity in accordance with best practices discussed in this report within 30 days.

Dated at Regina, in the Province of Saskatchewan, this 14th day of May, 2018.

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