



## **REVIEW REPORT 047-2021**

### **Ministry of Social Services**

**May 26, 2022**

**Summary:** An access to information request was received by the Ministry of Social Services (Social Services) on January 25, 2021 from the Applicant. Social Services advised the Applicant that it was determining if there was legal authority for the Applicant to make the request on behalf of another individual. The Applicant's lawyer submitted a second request to Social Services on behalf of the Applicant and the Individual to which the information relates that was signed by both the Applicant and the Individual. However, the Applicant requested a review of the first request regarding Social Service's decision that a Guardianship Order was not sufficient legal authority for the Applicant to receive records of another individual. The Commissioner found that the Applicant did not have authority under section 59 of FOIP to exercise the rights of the Individual in this case. The Commissioner recommended Social Services take no further action.

### **I BACKGROUND**

[1] The Applicant made an access to information request to the Ministry of Social Services (Social Services) on January 25, 2021, requesting access to the following information about another individual (Individual):

[Individual] was introduced to the [Social Services] through White Buffalo Youth Lodge. [Individual] signed a [sic] s.10 agreement. [Individual] worked with [Name Redacted]. [Individual] resided at Bethany Home. I would like any/all notes, decisions, input, opinions, or other documents of any kind related to this incident. I am both [parent] and legal guardian of [Individual] by Order of the Queen's Bench for Saskatchewan.

[2] Attached to the access to information request was a completed Form N – *Order Appointing a Decision-Maker of the Court of Queen’s Bench for Saskatchewan* – Judicial Centre of Saskatoon (Guardianship Order) appointing the Applicant as the personal guardian for the Individual pursuant to section 19(1) of *The Adult Guardianship and Co-Decision-making Act* (AGCDM Act).

[3] The Applicant completed the Social Services form *Consent to Disclose information* on February 5, 2021, which provided consent to release information to the Applicant’s lawyer.

[4] By email on February 5, 2021, the Applicant inquired with Social Services about the status of their access to information request. On February 8, 2021, the Records and Privacy Officer for Social Services responded to the Applicant, asking in part:

... We are currently working to establish legal authority to release the requested records to you. While we appreciate a copy of the Order provided to us, could you please provide clarification on which section of the order your request pertains to? ...

[5] On February 8, 2021, the Applicant’s lawyer responded to the email advising Social Services in part that:

... The applicant has provided you with the court order.

It is not the applicant’s responsibility, nor within their capacity to explain to you the order or its effects.

If you do not intend to release the requested information, please let us know as soon as possible so that we can escalate the matter appropriately ....

[6] On the same date, Social Services responded reiterating, “... we are currently working to establish legal authority to release the requested records to you.”

[7] On February 17, 2021, the Applicant’s lawyer contacted my office advising:

... I have been retained to, among other things, get all of [Individual]’s information from [Social Services]. Please see the [Social Services] consent form attached that allows for the release of [Applicant] and [Individual]’s information to me. Please also see attached the request that was made to [Social Services].

Neither the frontline Information workers, nor the supervisor find sufficient legal authority within this guardianship order to release the information. What they do not seem to understand is the legalese wording of the order. We are ‘deciding’ to [sic] initiate a legal proceeding under the Freedom of Information and protection [sic] of Privacy Act, and the guardianship order expresses permits [sic] [Applicant] to make these decisions for [Individual].

Please confirm with the ministry that the Queen’s Bench order is sufficient to initiate this request ....

[8] On February 18, 2021, my office responded to the Applicant’s lawyer by email advising in part:

... This matter has been discussed with the Commissioner, and he has asked me to request that you provide us with any additional relevant documentation regarding this request, as he would like to further examine the issue. Additional information that would be helpful including any written correspondence between yourself and [Social Services] regarding this matter, any response letter you received from [Social Services] outlining their decision regarding this request, and any other relevant documents you feel may help us to assess this situation such as documents filed in court, documents relating to the guardianship order etc. If you feel all relevant documentation has already been provided please let us know ....

[9] On the same date, the Lawyer submitted a second request on behalf of the Applicant and the Individual to which the information relates to Social Services. The second request was signed by both the Applicant and the Individual and requested the Individual’s own personal Child and Family Services information. This second request is not subject to this review.

[10] On February 23, 2021, the Lawyer advised my office by email that:

... I received a phone call 17 Feb 2021 [from Social Services] asking me if there was legal authority to release the information. I would say that the guardianship order is sufficient, but [Social Services] were not confident ...

[11] On March 8, 2021, the Lawyer advised my office by email (in part) that:

... I was told over the phone that the Guardianship order was insufficient legal authority to commence the process.

...

Please stay focussed on the Guardianship issue, and don't worry about the second request ....

[12] On March 10, 2021, my office notified the Lawyer, the Applicant and Social Services that my office would be undertaking a review of this matter and invited the parties to make submissions to my office. In the notification to Social Services my office, in part, advised:

...Based on the information available to me, it appears that on January 25, 2021 [Social Services] received an access to information request from [Lawyer] on behalf of [Applicant] for information related to [Individual] ... On or around February 17, 2021, [Social Services] verbally advised [Lawyer] that the Guardianship order was insufficient legal authority to commence the process.

... In your submission, please explain how it was determined by [Social Services] that the [Guardianship order] dated January 20, 2021 did not provide sufficient authority pursuant to section 59 of FOIP for the guardian named in that order or the guardian's legal representation to access the requested information.

[13] Social Services provided my office with a submission on July 19, 2021.

## **II RECORDS AT ISSUE**

[14] This review will consider whether the Applicant or the Applicant's Lawyer have the authority to exercise the rights of another individual pursuant to section 59 of *The Freedom of Information and Protection of Privacy Act* (FOIP). Therefore, there are no records at issue.

## **III DISCUSSION OF THE ISSUES**

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

[15] Social Services is a "government institution" pursuant to section 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to conduct this review.

### **2. Did the Applicant have the authority to exercise the rights of another individual pursuant to section 59 of FOIP?**

[16] Before beginning my analysis of section 59 of FOIP, I would first like to address the way in which the Applicant made their access to information request. The Applicant's January 25, 2021 request was completed on Social Services' internal form titled, *Request for Records under the Child and Family Services Act*.

[17] In my office's [Review Report 149-2017](#), I stated:

[29] Finally, through the course of this review, I became aware of forms that Social Services provides its clients to access information under the CFSA as the Applicant initially made the request on an internal Social Services form - the Child & Family Service Information Request Form (CFSA Information Request Form). I reviewed the forms that are prescribed in the CFSA Regulations, and this form is not prescribed. However, it is significantly similar to Form A (Access to Information Request Form) that is a prescribed form in the FOIP Regulations. The two forms share similarity in their appearance and in the information each form requires.

[30] The CFSA Information Request Form does not reference the right to access records under FOIP. Therefore, this raises more concerns that citizens are not aware of their rights afforded under FOIP because they are being ushered into a separate process under the CFSA. The underlying purpose of FOIP legislation is open, transparent and accountable government, however Social Services has created a separate, and in my opinion, confusing process.

[31] My office met with Social Services on November 14, 2018, to learn more about its internal access processes and to see if it could modify those processes to advise applicants of their rights under FOIP. Unfortunately, in response to that meeting, Social Services advised my office that it has decided not to change its current processes.

...

[33] Because of this, I would encourage individuals wishing to access records from Social Services to complete the formal Access to Information Request Form that is prescribed in the FOIP Regulations and submit it to Social Services. Then, if Social Services does not respond under FOIP, the Applicant can request a review by my office. Both the Access to Information Request Form and the Request for Review Form can be found on the IPC website: [www.oipc.sk.ca](http://www.oipc.sk.ca).

[34] If Social Services continues to provide the CFSA Information Request Form, I will treat such a form as an access request under FOIP and when a request for review occurs I will analyze the form under FOIP....

[18] Therefore, consistent with Review Report 149-2017, I will be treating this request as a formal request pursuant to FOIP. I will now consider the substantive issue in this matter.

That is, whether the Applicant is authorized to exercise another individual's rights under FOIP in this case.

[19] Section 59 of FOIP speaks to the exercise of rights by other persons, and provides:

**59** Any right or power conferred on an individual by this Act may be exercised:

(a) where the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate;

(b) where a personal guardian or property guardian has been appointed for the individual, by the guardian if the exercise of the right or power relates to the powers and duties of the guardian;

(c) where a power of attorney has been granted, by the attorney if the exercise of the right or power relates to the powers and duties of the attorney conferred by the power of attorney;

(d) where the individual is less than 18 years of age, by the individual's legal custodian in situations where, in the opinion of the head, the exercise of the right or power would not constitute an unreasonable invasion of the privacy of the individual; or

(e) by any person with written authorization from the individual to act on the individual's behalf.

[20] At the time of this request, the Applicant was appointed as the personal guardian of the individual. Therefore, section 59(b) of FOIP is the applicable section in this matter.

[21] Through the course of this review, the Lawyer asked my office, "is a parent permitted to request personal information regarding their child (under 18 [years old])?" The Lawyer alleges that the individual was 17 years old at the time of the request. My office confirmed with Social Services that the Applicant and Lawyer were solely relying on the Guardianship Order as their legal authority to request the information and there was no mention of the individual's age.

[22] As the age of the Individual was not raised by the Applicant or Lawyer at the time the request was made, the issue of the Individual allegedly being a minor falls outside the scope

of this review. Therefore, I will not be considering if the Applicant or Lawyer had the authority to act on behalf of the Individual pursuant to section 59(d) of FOIP. However, I will consider section 59(b) of FOIP.

[23] The AGCDM Act provides a means of protection and assistance for adults who are not able to make sound decisions independently and, as a result, may be vulnerable to personal or financial harm. Subsection 59(b) of FOIP provides that where an individual has a personal guardian or property guardian, the guardian can exercise the individual's rights or powers under FOIP provided it relates to the powers and duties of the guardian (*Guide to FOIP*, Chapter 3, "Access to Records", updated June 29, 2021 [*Guide to FOIP*, Ch. 3], p. 127).

[24] In order for this provision to apply, the following two requirements must be met:

1. Proof of the right to act as the personal guardian or property guardian is required.
2. Proof that disclosure of the requested information relates to the powers and duties of the guardian.

[25] I will now consider if both of these requirements have been met.

***1. Proof of the right to act as the personal guardian or property guardian.***

[26] The Applicant provided me with a copy of the Guardianship Order filed with the Court of Queen's Bench and signed by its Deputy Local Registrar on January 20, 2021. This Guardianship Order was to be reviewed by the Court six months from the date of signature. The Guardianship Order appointed the Applicant as the personal guardian of the Individual pursuant to section 19(1) of the AGCDM Act. It also detailed the specifics of what the personal guardian had authority over. The Guardianship Order was valid on the date the Applicant filed their access to information request with Social Services.

[27] Therefore, my office has been provided proof that at the time the request was made, the Applicant had the right to act as the Individual's personal guardian. As such, the first requirement has been met. I will now consider if the second requirement has been met.

**2. Proof that disclosure of the requested information relates to the powers and duties of the guardian**

[28] Section 15 of the AGCDM Act provides for a number of matters that can fall under the authority of an appointed personal guardian. This includes, for example, decisions where and with whom the individual will live, what social activities the individual will engage in, what educational, vocational or training the individual will participate in. The court order may include limitations or conditions that it deems necessary. Ultimately, the court determines what matters come under the authority of the personal or property guardian (*Guide to FOIP*, Ch. 3, pp. 127-128).

[29] In addition to providing the court order that outlines the matters the guardian has authority over, the applicant should also explain what the information is needed for and it should be within the scope, powers and duties set out in the court order (*Guide to FOIP*, Ch. 3, p. 128).

[30] The above noted January 20, 2021 Guardianship Order gave the Applicant, "...authority with respect to the following matters...":

- a. decisions respecting the [Individual]'s living arrangements.
- b. decisions respecting access to the [Individual].
- c. decisions respecting the [Individual]'s social activities.
- d. decisions respecting the [Individual]'s employment.
- e. decisions respecting the adult's educational, vocational or other training.
- f. decisions respecting whether the adult should apply for any license, permit, approval or other consent or authorization required by law that does not relate to the estate of the [Individual].
- g. decisions respecting legal proceedings that do not relate to the estate of the adult.
- h. decisions respecting the [Individual]'s health care, including decisions respecting admission to a health care facility or respecting treatment of the [Individual].
- i. decisions respecting the restraint of the [Individual].
- j. normal day-to-day decisions respecting the [Individual].

[31] The Applicant's January 25, 2021 access to information request did not outline why they wanted access to the information. It outlined the details of what the Applicant was



requesting and included details that the Applicant was the parent and legal guardian of the Individual. It also included a copy of the Guardianship Order.

[32] The Applicant and the Lawyer provided Social Services with a completed *Consent to Disclose Information* form dated February 5, 2021. The completed consent to disclose gave Social Services the authority to release information to the Applicant's Lawyer. However, it was not signed by the Individual. It was signed by the Applicant.

[33] My office was provided with a copy of an email chain between the Applicant/Lawyer and Social Services between the dates of January 25, 2021 and February 8, 2021. Pertinent portions of that email chain include:

Applicant to Social Services: February 5, 2021

... I would like to know the status on the request below sent to you on Jan 25, 2021 on my behalf.

Social Services to Applicant: February 8, 2021

... We are currently working to establish legal authority to release the requested records to you. While we appreciate a copy of the [Guardianship] Order provided to us, could you please provide clarification on which section of the order your request pertains to?  
...

Lawyer to Social Services: February 8, 2021

... I am counsel for [Applicant] ....

The applicant has provided you with the [Guardianship Order].

**It is not the applicant's responsibility to, nor within their capacity to explain to you the order or its effects.**

If you do not intend to release the requested information, please let us know as soon as possible so we can escalate the matter appropriately.

Social Services to Lawyer: February 8, 2021

... as I mentioned to [Applicant] we are currently working to establish legal authority to release the requested records to you.

[Emphasis added]

[34] I do not agree with the Lawyer’s assertion to Social Services that, “it is not the applicant’s responsibility to ... explain to you the order or its effects.” When an Applicant is making a request for another individual’s personal information, the onus is on the Applicant to demonstrate they have the authority to do so pursuant to section 59 of FOIP.

[35] By email on February 17, 2021, the Applicant’s Lawyer contacted my office and asserted, in part:

... Neither the frontline Information workers, nor the supervisor find sufficient legal authority within this guardianship order to release the information. What they do not seem to understand is the legalese wording of the order. We are ‘deciding’ tp [sic] initiate a **legal proceeding** under [FOIP], and the guardianship order expresses [sic] permits [Applicant] to make these decisions for [Individual].

[Emphasis added]

[36] FOIP seldom places the onus on an applicant to prove they have legal authority to request information. However, government institutions have an explicit duty to protect personal information. Therefore, when an applicant is trying to access information of another individual, a government institution must ensure they have authority to release that information to the applicant pursuant to section 59 of FOIP. If the government institution does not have enough evidence, then the applicant must provide that evidence.

[37] Item “g” of the Guardianship Order gives the Applicant power to make, “decisions respecting legal proceedings that do not relate to the estate of the adult.” Therefore, I must determine if an access to information request made pursuant to FOIP qualifies as a “legal proceeding.”

[38] I turn to [\*Britto v University of Saskatchewan, 2018 SKQB 92\*](#), for the definition of “legal proceeding” where Justice Danyliuk defined the term as follows:

[44] ... “Legal proceedings” have been defined and considered in the context of privacy law:

[10] *Legal proceedings* are proceedings governed by rules of court or rules of judicial or quasi-judicial tribunals that can result in a judgment of a court or a ruling

by a tribunal. Legal proceedings include all proceedings authorized or sanctioned by law, and brought or instituted in a court or legal tribunal, for the acquiring of a right or the enforcement of a remedy.

*Saskatoon (City) (Re)*, [2015 CanLII 6098](#) (SK IPC).

[45] In *The Evidence Act, SS 2006, c E-11.2*, the Saskatchewan Legislature has defined legal proceeding in two portions of [s. 2](#):

“**action**” means:

- (a) a civil proceeding commenced by statement of claim or in any other manner authorized or required by statute or rules of court; or
- (b) any other original proceeding between a plaintiff and a defendant; ...

“**matter**”, in relation to proceedings in a court, means every civil proceeding that is not an action; ...

[46] In the [Canada Evidence Act, RSC, 1985, c C-5, s. 30\(12\)](#) defines “legal proceeding” as “any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration”.

[47] Labour grievances have been acknowledged to be “legal proceedings” for statutory purposes: *Park v Canada*, [2012 TCC 306](#).

[48] Thus the modern definition of “legal proceeding” is relatively expansive and inclusive. It is not limited to the traditional lawsuit in a court. It can include matters taken before alternative boards and tribunals.

[39] Section 5 of FOIP provides for the right of access to records under FOIP:

**5** Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a government institution.

[40] Applying for access to records under FOIP does not qualify as a legal proceeding as it is not a matter taken before the Court, a tribunal or other board, “... for the acquiring of a right or the enforcement of a remedy.” In addition, an access to information request is not a proceeding, “...governed by rules of court or rules of judicial or quasi-judicial tribunals that can result in a judgment of a court or a ruling by a tribunal.”

[41] The Guardianship Order very clearly states that the Applicant had, "...authority with respect to ... decisions respecting legal proceedings that do not relate to the estate of the adult." Section 59(b) of FOIP only allows a personal guardian to exercise a specific power under FOIP, "... if the exercise of the right or power relates to the powers and duties of the guardian."

[42] Therefore, I find that the Applicant did not have authority under section 59 of FOIP to exercise the rights of the Individual in this case. I recommend Social Services take no further action.

#### **IV FINDING**

[43] I find that the Applicant did not have authority under section 59 of FOIP to exercise the rights of the Individual in this case.

#### **V RECOMMENDATION**

[44] I recommend Social Services take no further action.

Dated at Regina, in the Province of Saskatchewan, this 26<sup>th</sup> day of May, 2022.

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