



REVIEW REPORT 142-2022

Ministry of Social Services

November 28, 2022

Summary: The Applicant requested information on themselves from the Ministry of Social Services (Social Services). Social Services denied access to portions pursuant to subsections 29(1) and 31(2) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant asked the Commissioner to undertake a review of the exemptions applied by Social Services, as well as its need to extend its time to respond pursuant to subsections 12(1)(a)(i) and (ii) of FOIP. The Commissioner found Social Services met its legislative timeline to respond to the applicant's access to information request and section 12 of FOIP had no application. The Commissioner also found Social Services did not properly apply subsection 31(2) of FOIP, and that it properly applied subsection 29(1) of FOIP to only a few portions of the records, but not to others. The Commissioner recommended Social Services continue to withhold or release information accordingly.

I BACKGROUND

[1] On April 28, 2022, the Ministry of Social Services (Social Services) received an access to information request from the Applicant as follows:

All files + records, [date redacted], 1977 to today

[2] Because the scope of the Applicant's access to information request was potentially too broad and vague to identify responsive records, Social Services attempted to clarify it with the Applicant. After attempts to phone the Applicant were not successful, Social Services emailed the Applicant with a request for clarification on May 27, 2022, which the Applicant provided on May 30, 2022.

- [3] In correspondence dated May 30, 2022, Social Services advised the Applicant it was extending its time to respond by an additional 30 days pursuant to subsections 12(1)(a)(i) and (ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Social Services noted this shifted its deadline to respond to June 29, 2022.
- [4] In correspondence dated June 21, 2022, Social Services advised the Applicant it was partially withholding records pursuant to subsections 29(1) and 31(2) of FOIP.
- [5] On July 6, 2022, the Applicant asked my office to undertake a review of Social Services' decision.
- [6] On July 7, 2022, my office notified the Applicant and Social Services of my office's intention to undertake a review of Social Service's reliance on subsections 29(1) and 31(2) of FOIP, and its need to raise subsections 12(1)(a)(i) and (ii) of FOIP.
- [7] On September 27, 2022, Social Services provided my office with a copy of the records and its submission. The Applicant did not provide a submission.

II RECORDS AT ISSUE

- [8] At issue are 255 pages to which Social Services applied subsections 29(1) and 32(1) of FOIP. Social Services divided the records into three volumes and applied mostly subsection 29(1) of FOIP throughout each volume; it applied subsection 32(1) of FOIP to only three pages in volume two.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [9] Social Services qualifies as a "government institution" pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I have jurisdiction to undertake this review.

2. Did Social Services comply with legislated timelines?

[10] In its submission, Social Services stated it needed to contact the Applicant in order to clarify their access to information request. Social Services stated it needed to know where to initiate its search given the size of the Ministry. Given how the Applicant worded their access to information request, and the number of programs for which Social Services is responsible, it is reasonable that Social Services required such clarification.

[11] Subsections 6(3) and (4) of FOIP provide as follows:

6(3) Where the head is unable to identify the record requested, the head shall advise the applicant, and shall invite the applicant to supply additional details that might lead to identification of the record.

(4) Where additional details are invited to be supplied pursuant to subsection (3), the application is deemed to be made when the record is identified.

[Emphasis added]

[12] Social Services received the Applicant's access to information request on April 28, 2022, and made its final attempt to seek clarification from the Applicant on May 27, 2022. The Applicant did respond on May 30, 2022. Social Services then provided its section 7 response to the Applicant on June 21, 2022, which was less than 30 days later.

[13] It is clear that pursuant to subsection 6(4) of FOIP, the Applicant's access to information request would have been deemed to have been made on May 30, 2022. Social Services responded pursuant to section 7 of FOIP within 30 days of May 30, 2022, and so was compliant with section 7 of FOIP. There was no need, therefore, for Social Services to invoke section 12 of FOIP.

[14] I find, therefore, that section 12 of FOIP has no application in the circumstances, and that Social Services met its legislative timeline to provide a response.

3. Did Social Services properly apply subsection 31(2) of FOIP?

[15] Subsection 31(2) of FOIP provides as follows:

31(2) A head may refuse to disclose to an individual personal information that is evaluative or opinion material compiled solely for the purpose of determining the individual's suitability, eligibility or qualifications for employment or for the awarding of government contracts and other benefits, where the information is provided explicitly or implicitly in confidence.

[16] Subsection 31(2) of FOIP enables the head to refuse to disclose to individuals, personal information that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of government contracts and other benefits (*Guide to FOIP*, Chapter 4, "Exemptions from the Right of Access", updated April 30, 2021 [*Guide to FOIP*, Ch. 4], p. 286).

[17] The following three-part test can be applied:

1. Is the information personal information that is evaluative or opinion material?
2. Was the personal information compiled solely for one of the enumerated purposes?
3. Was the personal information provided explicitly or implicitly in confidence?

[18] Social Services applied subsection 31(2) of FOIP to pages 226 to 228 of the volume two records (redactions numbered 409 to 420). The portions of the records released to the Applicant indicate there is a "SAID Eligibility Report" plus a checklist and scoresheet.

1. Is the information personal information that is evaluative or opinion material?

2. Was the personal information compiled solely for one of the enumerated purposes?

[19] Social Services submitted as follows:

The two pages in question pertain to the assessment of the Applicant's eligibility for the Saskatchewan Assured Income for Disability program (SAID). SAID is an income support program for people with significant and enduring disabilities that is of a permanent nature, substantially impacts daily living activities, and which result in a

person requiring assistance in the form of an assistive device, assistance of another person, a service animal, or other accommodation...

...

Once an individual applies for SAID, an Assessor from the Saskatchewan Abilities Council (SaskAbilities) meets with the Applicant to ask a series of questions to assess the impact of the disability on and supports required by the Applicant. The Assessor documents responses from the Applicant and assigns scores for each response. These scores then allow for the determination of eligibility.

The Client Eligibility Report (page 226) is a summary of information collected by the Assessor and the Ministry which the Ministry uses to assess eligibility. Page 228 is an internal ministry worksheet used to ensure all required documents and information are completed in the application process. One difficulty score written at the top of the page was redacted.

The scores assigned by the Assessor are solely for the purpose of establishing eligibility for SAID, thus meeting the first test. The Assessor uses their expertise to direct the interview to obtain the necessary information to make an informed evaluation which results in the scores assigned to each question. The IPC Guide to FOIP, Chapter Four states “other benefits refer to benefits conferred by a government institution through an evaluative process.

The second part of the test is also met as the only purpose for the gathered information is to determine eligibility for SAID. The application process includes a specific consent for the release of information to SaskAbilities for this purpose (Attached).

[20] It appears the Saskatchewan Assured Income for Disability Program (SAID) provides income support to individuals with disabilities who qualify for the support. The [Government of Saskatchewan](#) website states that a, “Disability Impact Assessment is part of the application process and is designed to identify the presence of a significant and enduring disability”. Eligibility appears to be based on an evaluation process.

[21] First, for personal information to be involved, the information must be about an identifiable individual and must be personal in nature. Some examples are provided in subsection 24(1) of FOIP (*Guide to FOIP*, Ch. 4, p. 286).

[22] Social Services did not comment on how it determined personal information is involved. The SAID assessment (assessment), though, contains the individual’s name along with their assessment scores. The scores help determine if someone is eligible to receive SAID

benefits. The score would indicate something personal in nature about them – if they are eligible for financial benefits. This is personal information of the Applicant pursuant to subsections 24(1)(k)(i) of FOIP, which provides 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:

...

(k) the name of the individual where:

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

[23] Normally, an individual’s personal information is to be made available to them upon request pursuant to subsection 31(1) of FOIP. I need to determine, though, is if Social Services can continue to withhold the Applicant’s personal information pursuant to subsection 31(2) of FOIP.

[24] What I need to consider next, then, is if the redacted portions of the records contain evaluative information for the enumerated purpose, which in this case would be to establish an individual’s eligibility for SAID.

[25] “Evaluative” means to have assessed, appraised, to have found or to have stated the number of (*Guide to FOIP*, Ch. 4, p. 286).

[26] “Opinion material” is a belief or assessment based on grounds short of proof; a view held as probable for example, a belief that a person would be a suitable employee, based on that person’s employment history. An opinion is subjective in nature and may or may not be based on facts (*Guide to FOIP*, Ch. 4, p. 287).

[27] “Eligibility” means fit and proper to be selected or to receive a benefit; legally qualified for an office, privilege, or status (*Guide to FOIP*, Ch. 4, p. 287).

[28] Based on a review of page 226, redactions 409 to 419 appear to be numbered scores. The portion of redaction 420 on page 228 released to the Applicant is titled, “Additional

Comments/Observations”. This appears to be notes about the Applicant completed by the assessor.

[29] In considering this information and its purpose, I turn to the Alberta Information and Privacy Commissioner (AB IPC) [Order F2021-13](#). In that order, the AB IPC considered evaluation sheets and scoring metrics pursuant to subsection 19(1) of *Alberta’s Freedom of Information and Protection of Privacy Act* (AB FOIP) in. Subsection 19(1) of AB FOIP, which is substantially similar to subsection 31(2) of FOIP, provides as follows:

19(1) The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material compiled for the purpose of determining the applicant's suitability, eligibility or qualifications for employment or for the awarding of contracts or other benefits by a public body when the information is provided, explicitly or implicitly, in confidence.

[30] At paragraphs [12] and [13] of Order F2021-13, the AB IPC stated as follows:

[para 12] In Order F2015-19 I considered a similar situation, in which the public body withheld interview evaluation sheets and scoring metrics under section 19(1). As in this case, the recorded responses of the applicant were disclosed to the applicant; however, the score for each part of the interview was withheld. I found (at para. 12):

The test scores fall within the definition of “evaluative” used in past Orders of this Office, insofar as they represent a numerical assessment of the Applicant’s responses to the interview questions. The additional comments on page 20 include a conclusion regarding the Applicant’s suitability, and could be interpreted as an opinion of the Applicant. Therefore, the first two parts of the above-cited test are met.

[para 13] This analysis applies here as well. The opinions of the interviewers, including the score assigned to the Applicant, and the opinions of the person interpreting the polygraph test, are all evaluations or opinions about the Applicant, created or compiled during the Applicant’s job application process.

[31] Similar to the matter before me, the test scores appear to be a “numerical assessment of the Applicant’s responses”, while the comments by the assessor are part of that assessment. These together form part of determining if the Applicant is eligible for SAID. As such, the assessment information collected on the Applicant is for the enumerated purpose of determining SAID eligibility. I will now consider the third part of the test.

3. Was the personal information provided explicitly or implicitly in confidence?

- [32] Social Services was not clear in its submission if confidentiality is implicitly or explicitly understood.
- [33] “In confidence” usually describes a situation of mutual trust in which private matters are relayed or reported. Information provided in confidence means that the supplier of the information has stipulated how the information can be disseminated. In order for confidence to be found, there must be an implicit or explicit agreement or understanding of confidentiality on the part of both the government institution and the party providing the information (*Guide to FOIP*, Ch. 4, p. 288).
- [34] “Implicitly” means confidentiality is understood even though there is no actual statement of confidentiality, agreement, or other physical evidence of the understanding that the information will be kept confidential. Factors to consider include if the government institution would normally and/or consistently keep the information confidential, or if it has internal policies or procedures that speak to how the information is to be handled (*Guide to FOIP*, Ch. 4, p. 289).
- [35] “Explicitly” means that the request for confidentiality has been clearly expressed, distinctly stated or made definite. There may be documentary evidence that shows that the information was provided on the understanding that it would be kept confidential (*Guide to FOIP*, Ch. 4, p 289).
- [36] There is no indication on the records themselves, or on the copy of the SAID “Consent to Release Information” form Social Services provided indicating an expectation of confidence, whether explicit or implicit. Social Services did add the following statement:

The assessment tool is used to assess eligibility for all SAID applicants. Assessors do not identify specific scores to applicants while interviewing them and held as confidential as required by the Ministry. The Ministry does not provide the scores when advising an individual if they are eligible for the program. It is the practice of the

ministry to redact all scores from the assessment documents to protect the consistency and objectivity of the tool...

[37] Social Services is arguing that the scores are confidential, but its statement still does not provide me with enough detail to determine if confidentiality is explicitly or implicitly understood. If the concern is to maintain the objectivity of the tool, then I need to know how withholding the individual scores would do that. For example, the concern may be that if test-takers know the assessment questions ahead of time, then they might be able to respond in a way that compromises the outcome. Social Services, though, has not made that argument, nor has it provided evidence to support that argument or connection. Evidence might include a copy of the SAID assessment questions along with information on how test-taker responses are interpreted into a score, which then becomes confidential.

[38] As the third part of the test is not met, I find Social Service did not properly apply subsection 31(2) of FOIP to redactions 409 to 420 on pages 226 to 228 of the volume two records. As Social Services has applied no other exemptions to this information, I recommend it release the information.

4. Did Social Services properly apply subsection 29(1) of FOIP?

[39] 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.

[40] Subsection 29(1) of FOIP protects the privacy of individuals whose personal information may be contained within records responsive to an access to information request made by someone else. Subsection 29(1) requires a government institution to have the consent of the individual whose personal information is in the record prior to disclosing it (*Guide to FOIP*, Ch. 4, p. 281).

[41] When dealing with information in a record that appears to be personal information, the first step is to confirm the information indeed qualifies as personal information pursuant to section 24 of FOIP (*Guide to FOIP*, Ch. 4, p. 281).

[42] In this review, relevant subsections of subsection 24(1) of FOIP include 24(1)(b), (d) and (e) of FOIP, which 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:

...

(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;

...

(d) any identifying number, symbol or other particular assigned to the individual, other than the individual’s health services number as defined in *The Health Information Protection Act*;

(e) the home or business address, home or business telephone number or fingerprints of the individual;

[43] Social Services submitted as follows:

Of the 469 redactions applied to the records; 446 relied on FOIP s. 29(1). Those redactions primarily pertain to the applicant’s roommate (Individual B) who’s name appeared on utility bills, banking and mortgage documents, banking document, and references to the roommate’s income assistance file.

While the applicant will most likely be aware of who [they] lived with for a time, we do not have Individual B’s consent to release [their] name or other personal information without [their] consent.

[44] The records throughout contain “SWIN” printouts (“SWIN” is a case management tool used by Social Services), copies of utility bills (e.g., water bills, power bills, gas bills, phone bills), insurance documents and renewals, bank documents and mortgage statements, water heater rental statements, moving company quotes, property tax notices, title notices, applications for natural gas, billing screen printouts (from SWIN) and handwritten notes.

[45] First, I will consider factors where information is not considered “personal information”. In past reports, I have stated it is an absurd result to withhold information that the Applicant has supplied or would otherwise know (e.g., [Review Report 132-2022](#)). In past reports, I have also stated that names of individuals, as well as their contact information or details used in a business or work context (e.g., name, job title, address, phone number, email address), is not personal information. I have often referred to this as “business card” information (e.g., [Review Report 115-2021](#)). I have included in this the signatures of individuals working in a professional capacity (e.g., [Review Report 301-2019](#)).

Absurd results

[46] Upon review of the records, I note the following are jointly in the Applicant’s and Individual B’s names: all the utility bills (except on page 17 of volume two where only Individual B’s name appears on a phone bill), mortgage documents and title notices (e.g., pages 1 to 3 of volume three records; pages 88 and 90 of volume two records), property tax notices (e.g., page 27 of volume two records), insurance documents (e.g., page 25 of volume one records), application for natural gas (e.g., page 58 of volume two records) and water heater rental documents (e.g., page 66 of volume one records). These represent the majority of the redactions Social Services has made.

[47] Social Services also stated it redacted information pertaining to “Individual A” and “Individual C”, who appear to have a familial relationship to the Applicant. From a review of the records, portions where Individual A’s name appears includes their employment information and relationship to the Applicant (e.g., page 86 of volume one records; page 76 of volume two records). Portions of the records where Individual C appears include their name on mortgage documents (alongside the names of the Applicant and Individual B on page 4 of volume 3 records), and on email exchanges in which the Applicant either sent the email or was included (e.g., pages 136 and 153 of volume three records). Individual C’s name also appears on SWIN printouts regarding the Applicant, and in some cases the portions released to the Applicant indicate the familial relationship between the two (e.g., pages 525 and 634 of volume three records).

[48] It would be an absurd result to withhold the information described from the Applicant as they already have knowledge of it (e.g., joint utility bill information or information regarding family employment), or else supplied it (e.g., Individual C's email address). As such I find Social Services did not properly apply subsection 29(1) of FOIP as I have described at paragraphs [46] and [47] of this Report, and recommend it release this information. The exception I note is on page 17 of volume two where only Individual B's name appears; I recommend Social Services continue to withhold this information pursuant to subsection 29(1) of FOIP as it is personal information as defined by subsection 24(1)(b) of FOIP.

Business card information

[49] Throughout volumes one, two and three, Social Services applied subsection 29(1) to the names of individuals from "utility companies, service companies, financial institutions...". Portions released to the Applicant indicate this includes the names of individuals (and some of their contact information and/or signature) as follows: Canadian Mental Health Association (e.g., pages 69 to 72 of volume one); the Saskatchewan Health Authority (e.g., pages 88 and 103 of volume one), "AMP" insurance (e.g., page 150 of volume one); Mackenzie Plumbing and Heating (e.g., p 269 of volume one); Wesmor (e.g., page 270 of volume one); various moving companies (e.g., page 330 of volume one and pages 5 and 7 of volume two); SaskEnergy (e.g., page 11 of volume two); Credit Union (e.g., pages 28 to 32 of volume two; page 132 of volume three); Neil Squire Society (e.g., page 62 of volume two); Regina City (e.g., page 145 of volume two); Human Resources Development Canada (e.g., page 124 of volume one); Sutton Group (e.g., page 194 of volume one); Chiropractor (e.g., page 202 of volume three); and a community-based organization (e.g., page 518 of volume three).

[50] The above constitutes business card information; I find, therefore, Social Services did not properly apply subsection 29(1) of FOIP as I have described at paragraph [49] of this Report and recommend Social Services release it.

[51] Now, I will consider the few places where personal information of third parties does exit:

- Page 44 of volume one – client names (i.e., individuals not known to the Applicant) and addresses (subsection 24(1)(e) of FOIP);
- Pages 151 and 160 of volume two – client names (i.e., individuals not known to the Applicant) and account numbers (subsection 24(1)(d) of FOIP); and
- Pages 146 and 158 of volume two – name and account details of a financial nature of someone else (subsection 24(1)(b) of FOIP).

[52] I find Social Services properly applied subsection 29(1) of FOIP as I have described at paragraph [51] of this Report and recommend it continue to withhold this information pursuant to subsection 29(1) of FOIP.

IV FINDINGS

[53] I find I have jurisdiction to conduct this review.

[54] I find section 12 of FOIP has no application in this review and that Social Services met its legislated timeline to respond to the access to information request.

[55] I find Social Services did not properly apply subsection 29(1) of FOIP as described at paragraphs [48] and [50] of this Report. I also find that it did properly apply subsection 29(1) of FOIP to Individual B's name on page 17 of volume two and as described at paragraph [52] of this Report.

[56] I find Social Services did not properly apply subsection 31(2) of FOIP as described at paragraph [38] of this Report.

V RECOMMENDATIONS

[57] I recommend Social Services release information where it applied subsection 29(1) of FOIP as described at paragraphs [48] and [50] of this Report within 30 days of issuance of this Report.

[58] I recommend Social Services continue to withhold Individual B's name on page 17 of volume two and the information outlined at paragraph [52] of this Report pursuant to subsection 29(1) of FOIP.

[59] I recommend Social Services release information where it applied subsection 31(2) of FOIP as described at paragraph [38] of this Report within 30 days of issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 28th day of November, 2022.

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