



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 201-2022

Saskatchewan Legal Aid Commission

May 5, 2023

Summary:

The Applicant made an access to information request to the Saskatchewan Legal Aid Commission (SLAC). SLAC withheld 19 emails in full pursuant to subsections 17(1)(b)(i) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant was not satisfied with SLAC's response, so asked the Commissioner to undertake a review. The Commissioner found that subsection 29(1) of FOIP applied to some portions of the emails, and that there was no need to review SLAC's reliance on subsection 17(1)(b)(i) of FOIP. The Commissioner recommended SLAC release the 19 emails to the Applicant, except for those portions he found subsection 29(1) of FOIP applies.

I BACKGROUND

[1] The Saskatchewan Legal Aid Commission (SLAC) received the Applicant's access to information request on September 12, 2022, which stated as follows:

Access to full copies of all correspondence (telephone and/or emails) to [name removed], [their] law firm, or [name removed] including, but not limited to, the emails that [name removed], [position removed] for Legal Aid referred to in [their] August 31, 2022 letter regarding my privacy complaint. [Name removed] of [law firm removed] stated in [their] sworn affidavit "There was also an email indicating that, on November 25, 2021, the Respondent had contacted Legal Aid, asking if the Appellant qualified for Legal Aid. [They] was 'adamant' that [they] did not..." This information is very specific. Access to all correspondence, telephone or email that occurred to prompt this affidavit and the affidavit of [name removed] between Legal Aid and the aforementioned [sic] parties. Access to all further correspondence that occurred with [name removed], [their] law firm or [name removed] after my privacy complaint of June 10, 2022. Access to the requested information void of any redactions. September 30, 2021 to August 31, 2022.

- [2] In its October 11, 2022 decision letter, SLAC responded to the request, withholding the record pursuant to subsections 17(1)(b)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and as personal information of another individual pursuant to subsections 24(1)(g) and (j) and 24(3)(a) and (b) of FOIP.
- [3] On October 10, 2022, the Applicant requested a review of SLAC’s decision to deny access to the record.
- [4] On December 5, 2022, my office notified SLAC and the Applicant that it would be undertaking a review and invited both parties to make a submission. SLAC provided my office with its submission on February 6, 2023. The Applicant did not provide my office with a submission.

II RECORDS AT ISSUE

- [5] Initially, there were 19 emails at issue in this review (totalling 13 pages) that SLAC withheld in full pursuant to subsections 17(1)(b) and 29(1) of FOIP. SLAC provided my office with the 19 emails, explaining that it was only claiming its exemptions on the portions of the emails it had highlighted, meaning it would release the remainder to the Applicant. It also advised it would fully release emails 9 and 19 to the Applicant. As such, there are now 17 emails at issue in this review and I will only review the portions of the records that SLAC highlighted, which is as follows:

Email #	Description	FOIP Exemption(s) applied
1	Email of November 12, 2021 at 4:40 pm	17(1)(b)(i), 29(1)
2	Email of November 15, 2021 at 7:36 pm	17(1)(b)(i)
3	Email of November 16, 2021 at 10:20 am	29(1)
4	Email of November 16, 2021 at 11:32 am	29(1)
5	Email of November 22, 2021 at 1:36 pm	17(1)(b)(i)
6	Email of November 22, 2021 at 5:16 pm	29(1)
7	Email of November 22, 2021 at 5:15 pm	29(1)
8	Email of November 25, 2021 at 12:56 pm	17(1)(b)(i)
10	Email of November 26, 2021 at 8:50 pm	29(1)
11	Email of November 29, 2021 at 9:47 am	17(1)(b)(i), 29(1)
12	Email of November 29, 2021 at 3:14 pm	17(1)(b)(i), 29(1)

Email #	Description	FOIP Exemption(s) applied
13	Email of November 29, 2021 at 4:56 pm	17(1)(b)(i), 29(1)
14	Email of December 10, 2021 at 11:06 am	17(1)(b)(i), 29(1)
15	Email of December 10, 2021 at 12:21 pm	17(1)(b)(i), 29(1)
16	Email of December 10, 2021 at 12:26 pm	17(1)(b)(i), 29(1)
17	Email of December 10, 2021 at 2:08 pm	17(1)(b)(i)
18	Email of December 10, 2021 at 2:13 pm	17(1)(b)(i)

[6] In its submission, SLAC advised:

In correspondence to [Analyst], dated January 4, 2023, SLAC also indicated that it would seek to rely on Section 22 (solicitor-client privilege) as an exemption. The exemption has not been referred to in the Section 7 [of FOIP] decision.

[7] My office's [*Rules of Procedure*](#) (effective December 1, 2018, revised December 8, 2022) states, in part, under section 2-4(3):

... Discretionary exemptions, not included in the head's decision under FOIP/LAFOIP, will not be considered by the commissioner's office unless there are exceptional circumstances.

[8] Section 22 of FOIP is a discretionary exemption that was not raised at the time the section 7 of FOIP decision letter was sent to the Applicant. By email on May 1, 2023, my office advised SLAC that I would not be considering section 22 of FOIP in this review.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[9] SLAC is a "government institution" as defined by subsection 2(1)(d)(ii) of FOIP and subsection 3(a) and Part I of *The Freedom of Information and Protection of Privacy Regulations*. Therefore, I find I have jurisdiction to undertake this review.

2. Does subsection 29(1) of FOIP apply to the record?

[10] I am reviewing subsection 29(1) of FOIP on emails 1, 3, 4, 6, 7 and 10 to 16.

[11] Subsection 29(1) 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.

[12] Subsection 29(1) of FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains consents to its disclosure or if disclosure without consent is authorized by one of the enumerated subsections of 29(2) or section 30 of FOIP (*Guide to FOIP*, Chapter 6, “Protection of Privacy”, updated January 18, 2023, [*Guide to FOIP*, Ch. 6], at p. 183)

[13] Section 29 of FOIP only applies to personal information as defined by subsection 24(1) of FOIP. However, the list provided in subsection 24(1) of FOIP is not meant to be exhaustive as there can be other types of information that would qualify as personal information that are not listed.

[14] In order to qualify as personal information, the information must 1) be about an identifiable individual; and 2) be personal in nature. Information is about an “identifiable individual” if the individual can be identified from the information (e.g., their name is provided) or if the information, when combined with information otherwise available, could reasonably allow the individual to be identified. To be “personal in nature” means the information provides something identifiable about the individual (*Guide to FOIP*, Ch. 6, pp. 32-33).

[15] In its submission, SLAC has argued the following qualifies as personal information:

Emails 3, 4, 6 and 7 specifically refer to information sent by [name redacted] that is of a private or confidential nature and replies to a request for information. The email would disclose the request made and does not contain views or opinions of another individual.

...

In emails 1, 13, 15 and 16 [name redacted] finances were discussed...

...

Emails 1, 15 and 16 contain information that ... relates to information supplied [sic] by [name redacted] with respect to ... application for legal services by SLAC.

...

SLAC is also seeking to rely on section 24(1)(d) as it relates to the LSN [Legal Services Number] is [sic] emails # 10, 11 and 12.

....

SLAC is also seeking to rely on Section 24(1)(e) as it relates to [name redacted] phone number in emails #14 and 15.

[16] Subsections 24(1)(d), (e), (g), (j) and (k) of FOIP provide:

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:

...

(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;

...

(g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

...

(j) information that describes an individual’s finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; 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.

[17] From a review of the withheld information in emails 3, 4, 6, and 7, it would qualify as personal information pursuant to subsection 24(1)(g) of FOIP as it is correspondence and

replies to the correspondence that is implicitly confidential in nature that relates to an identifiable individual.

- [18] Email 3 and 14 contains personal contact information of an individual such as a telephone number and personal email address. This information qualifies as personal information pursuant to subsection 24(1)(e) of FOIP.
- [19] Some of the information redacted in these emails would qualify as personal information pursuant to subsection 24(1)(k)(i) and (ii) of FOIP as it appears with other personal information or the disclosure of the name itself would reveal personal information about the individual. For example, this can be found in emails 4, 7, 14 and 15.
- [20] Some of the withheld information relates to an individual's finances, financial history and financial assets and liabilities which would qualify as personal information pursuant to subsection 24(1)(j) of FOIP. This type of information can be found in emails 1, 13, 15 and 16.
- [21] Finally, SLAC assigns a unique Legal Services Number (LSN) to its clients. An identifying number assigned to an individual would qualify as personal information pursuant to subsection 24(1)(d) of FOIP. Examples of where SLAC has withheld this type of personal information can be found in emails 10 and 11.
- [22] I note, SLAC only applied subsection 17(1)(b)(i) of FOIP to portions of emails 2, 5, 8, 17 and 18. However, from a review of the record, it appears the withheld information in these emails may fully qualify as personal information pursuant to subsection 29(1) of FOIP. Therefore, as subsection 29(1) of FOIP is a mandatory exemption, I will first consider if it applies to these emails.
- [23] The withheld information in emails 2 and 5 are the details of phone conversations that have occurred between SLAC officials and an identifiable individual who is not the Applicant. The withheld information in emails 8, 17 and 18 are personal details regarding an individual's current status with SLAC, including the next steps. This qualifies as personal

information pursuant to subsection 24(1)(k)(i) of FOIP. Therefore, subsection 29(1) of FOIP applies to these emails.

[24] I find, therefore, subsection 29(1) of FOIP applies to the highlighted information above in emails 1 to 8 and 10 to 18. I recommend SLAC continue to withhold this information.

[25] As I have found subsection 29(1) of FOIP applies to the highlighted portions of the record, I do not need to consider SLAC's reliance on subsection 17(1)(b)(i) of FOIP on these same portions.

IV FINDINGS

[26] I find I have jurisdiction to undertake this review.

[27] I find subsection 29(1) of FOIP applies to the highlighted information in emails 1 to 8 and 10 to 18.

V RECOMMENDATION

[28] I recommend that SLAC, within 30 days of issuance of this Report, release the emails to the Applicant subject to the portions where I found subsection 29(1) of FOIP to apply (see paragraph [24] of this Report) and release emails 9 and 19 in their entirety.

Dated at Regina, in the Province of Saskatchewan, this 5th day of May, 2023.

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