



INVESTIGATION REPORT 096-2022

Saskatchewan Liquor and Gaming Authority

March 8, 2023

Summary:

In December 2021, the Saskatchewan Liquor and Gaming Authority (SLGA) became aware that it was the subject of a cyberattack. It had notified affected individuals, including former employees, that their personal information was impacted in the cyberattack. A former employee (Complainant) requested that their personal information be deleted from SLGA's "files". SLGA indicated it needed to retain employee records until the employee is 75 years of age or for 5 years after death. The Complainant requested that the Commissioner investigate this matter. The Commissioner found that SLGA has the authority to continue to maintain the Complainant's personal information until the retention period has been met. He recommended that SLGA determine if it can shorten the length of time, it retains the personal information of former employees. He also recommended the SLGA ensure it has mechanisms in place, so it disposes of personal information in a timely manner when retention periods have been met.

I BACKGROUND

- [1] On December 25, 2021, the Saskatchewan Liquor and Gaming Authority (SLGA) became aware it was the subject of a cyberattack. The personal information of approximately 40,000 individuals were impacted, including former SLGA employees.
- [2] On January 21, 2022, SLGA sent letters to past employees to notify them of the privacy breach.

- [3] After receiving the letter, a former SLGA employee (Complainant) contacted the SLGA requesting a copy of the personal information the SLGA had on them. SLGA sent the Complainant a copy of what personal information it had.
- [4] On May 19, 2022, the Complainant requested an investigation by my office. The Complainant indicated that their employment with SLGA was casual and temporary and mainly in 2004. They asked SLGA to remove their personal information from SLGA's files. However, as the Complainant indicated, SLGA said it must keep the information for "only if 75 years or 5 years dead". The Complainant found SLGA's response to be unacceptable.
- [5] On June 20, 2022, my office notified both SLGA and the Complainant that it would be undertaking an investigation into SLGA's response to the Complainant.
- [6] My office had also undertaken another investigation into the cyberattack, which culminated into [Investigation Report 370-2021](#), which was issued on November 10, 2022.
- [7] On March 1, 2023, my office received a submission from SLGA regarding the Complainant's concerns.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [8] SLGA is a "government institution" as defined by subsection 2(1)(d)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and subsection 3(a) and Part I of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations). Therefore, I find that I have jurisdiction to investigate this matter.

2. Is personal information involved?

[9] FOIP provides for rules on how government institutions are to collect, use, and/or disclose personal information.

[10] The Complainant forwarded my office a copy of the personal information SLGA had sent to them. The copy indicates what personal information SLGA was retaining about the Complainant. The types of personal information were name, social insurance number, mailing address, date of birth, telephone number, pay cheque information and banking information. SLGA also had information regarding the Complainant's spouse, including the spouse's date of birth. Such information qualifies as "personal information" as defined by subsections 24(1)(b), (d), (e), (j), (k)(i) and (ii) of FOIP 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;

...

(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.

[11] Based on this, I find personal information is involved as defined by subsection 24(1) of FOIP.

3. Is SLGA retaining the Complainant’s personal information pursuant to *The Saskatchewan Employment Act*, *The Archives and Public Records Management Act* and FOIP?

[12] In this section, I will first determine if SLGA had the authority to collect and keep records regarding the Complainant. Then, I will determine if SLGA has the authority to continue to keep such records even though the Complainant wishes the records to be destroyed.

a. Did SLGA have the authority to collect and keep such records?

[13] Section 25 of FOIP provides:

25 No government institution shall collect personal information unless the information is collected for a purpose that relates to an existing or proposed program or activity of the government institution.

[14] “Collection” means to bring or come together; assemble; accumulate; obtain personal information from any source by any means (*Guide to FOIP*, Chapter 6 “Protection of Privacy”, Updated January 18, 2023 [*Guide to FOIP*, Ch. 6], p. 329).

[15] A government institution must be able to demonstrate that the collection of personal information was for a specific purpose, necessary and lawful in accordance with sections 25 and 26 of FOIP (*Guide to FOIP*, Ch. 6, p. 329).

[16] In its submission, SLGA cited it must keep records set out in section 2-38 of *The Saskatchewan Employment Act*. Section 2-38 of *The Saskatchewan Employment Act* outlines the types of records an employer must keep. It says:

2-38(1) No employer shall fail to keep:

(a) records showing the particulars of every unwritten contract dealing with wages or other monetary benefits to which any employee is entitled;

(b) a copy of every written contract or other document dealing with wages or other monetary benefits to which any employee is entitled; and

(c) records showing the following with respect to each employee:

- (i) the full name, sex, date of birth and residential address of the employee;
- (ii) the name or a brief description of the job or position of the employee;
- (iii) the rate of wages of the employee expressed in terms of wages per hour, day, week, month or other period;
- (iv) the total wages paid to the employee for each week or other pay period;
- (v) the time when the employee's work begins and ends each day and the time when any meal breaks allowed to the employee each day begin and end;
- (vi) the total number of hours worked by the employee each day and each week as well as the total number of hours each day and each week that the employee is required to be at the disposal of the employer;
- (vii) every deduction made from the wages of the employee for any purpose whatever and the purpose for which each deduction was made;

...

(4) The records that an employer is required to keep pursuant to this section respecting an employee must cover the most recent five years of the employee's employment.

(5) If an employee's employment ends, the employer shall retain the records mentioned in subsection (4) for a period of two years after the date on which the employee's employment ended.

(6) An employee's employment is deemed not to have ended for the purposes of subsection (5) if the employee is employed again by the employer within six months after the date on which the employment of the employee ended.

[17] Based on section 25 of FOIP and section 2-38 of *The Saskatchewan Employment Act*, I find that SLGA had the authority to collect personal information regarding the Complainant's employment.

b. Does SLGA have the authority to continue to maintain the Complainant's personal information?

[18] FOIP does not specify how long a government institution should retain personal information. However, a specifically identified purpose is often a clear indicator of how long this information needs to be retained. There may be legislative requirement to keep information for a certain amount of time. In other instances, there may be no legislative

requirement, and an organization needs to determine the appropriate retention period (*Guide to FOIP*, Chapter 6 “Protection of Privacy”, Updated January 18, 2023 [*Guide to FOIP*, Ch. 6], p. 329).

[19] Section 2 of *The Archives and Public Records Management Act* defines “public record” as follows:

2 In this Act:

...

“public record” means:

- (a) a record made or received by a government institution in carrying out that government institution’s activities;
- (b) a ministerial record;
- (c) a record made or received by the Legislative Assembly, the Legislative Assembly Service or an Officer of the Legislative Assembly;
- (d) a court record; or
- (e) an administrative record of a court;

but does not include a prescribed record;

[20] Subsections 22(1) and (2) of *The Archives and Public Records Management Act* prevents a government institution such as SLGA from destroying any public records unless it is done in accordance with an approved records schedule:

22(1) Subject to subsection (2), no person shall, with an intent to deprive the Government of Saskatchewan, a government institution or the Provincial Archives of Saskatchewan of the custody, control or use of, or access to, a public record:

- (a) destroy or damage the public record;
- (b) remove or conceal the public record from the Government of Saskatchewan, a government institution or the Provincial Archives of Saskatchewan; or
- (c) direct, counsel or cause any person in any manner to do anything mentioned in clause (a) or (b).

(2) Subsection (1) does not apply if the destruction is done in accordance with an approved records schedule.

[Emphasis added]

[21] Attached to its submission, SLGA provided my office with a copy of its Retention Schedule, which was approved by the Saskatchewan Archives Board. Its retention period for employee records provides that it is to maintain such records until the employee reaches the age of 75 years or 5 years after death (whichever is earlier) provided that 5 years have elapsed since the last administrative action on the file:

Retention	P.I. SLGA use only
<p>A – Records outlined by the <i>Saskatchewan Employment Act</i> – Age 75 of employee or 5 years after death (whichever is earlier) provided 5 years have elapsed since the last administrative action on the file.</p> <p>B – Other employee information – 6 years</p> <p>C – Disciplinary records – 2 years</p>	<p>P.I.</p>

[22] SLGA also noted in its submission that its retention period for employee records is consistent with the retention period for employee records set out in Saskatchewan Archives’ [Administrative Records Management System 2014 \(ARMS2014\)](#), which says:

Retention
<p>Age 75 of employee or 5 years after death (whichever is earlier) provided 5 years have elapsed since the last administrative action on the file.</p>

[23] Therefore, based on the above, I find that SLGA has the authority to continue to maintain the Complainant’s personal information until the retention period has been met.

[24] Subsection 24.1 of FOIP imposes a duty to protect personal information upon government institutions. In my office’s [Investigation Report 370-2021](#), I made a number of recommendations to SLGA on how it can improve its security, including that it ensures it

is sufficiently resourced to promptly act upon critical vulnerabilities, that it assesses the effectiveness of its solutions to detect and block malicious activities frequently, and that it ensures it is sufficiently resourced to promptly respond to malicious activities. In response, SLGA indicated it has added resources dedicated to managing “infrastructure, vulnerabilities and the security program” and that it has completed an external penetration test. Therefore, SLGA has taken steps to improve the security of the personal information it maintains.

[25] Also, in [Investigation Report 370-2021](#), I had recommended that SLGA ensure it is not retaining personal information unnecessarily. In response, SLGA indicated it is working with a consultant to review its retention policies and procedures. I recommend that SLGA determine if it can shorten the length of time, it retains the personal information of former employees. Also, I recommend that SLGA ensure it has mechanisms in place to dispose of personal information in a timely manner when retention periods have been met.

III FINDINGS

[26] I find that I have jurisdiction to investigate this matter.

[27] I find that “personal information” as defined by subsection 24(1) of FOIP is involved in this matter.

[28] I find that SLGA had the authority to collect personal information regarding the Complainant’s employment.

[29] I find that SLGA has the authority to continue to maintain the Complainant’s personal information until the retention period has been met.

IV RECOMMENDATIONS

[30] I recommend that SLGA determine if it can shorten the length of time it retains the personal information of former employees.

[31] I recommend that SLGA ensure it has mechanisms in place to dispose of personal information in a timely manner when retention periods have been met.

Dated at Regina, in the Province of Saskatchewan, this 8th day of March, 2023.

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