Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 212-2022

Public Service Commission

May 2, 2023

Summary: The Complainant was an employee at a ministry of the Government of Saskatchewan (GoS). They retired from GoS in September 2022. The following month, the Complainant received a letter from the Public Service Commission (PSC) indicating that the Complainant received an overpayment in their vacation leave and sick leave. Therefore, the PSC sought repayment of the overpayment. The Complainant asserted that their privacy was breached when PSC carbon copied their former supervisor on the letter. The Commissioner found that PSC had not identified its authority under *The Freedom of Information and Protection Privacy Act* (FOIP) for the disclosure of the Complainant's personal information. He also found that PSC had not identified how the Complainant's former supervisor had a need-to-know the Complainant's personal information for the purpose of seeking repayment. The Commissioner found that a privacy breach occurred. He recommended that the PSC send a letter to the Complainant to apologize for the breach. He also recommended that PSC amend its procedures so it will only carbon copy individuals on letters where it has: 1) the authority to use and/or disclose personal information under FOIP, and 2) the use and/or disclosure is in accordance with the need-to-know principle.

I BACKGROUND

[1] Employees of the Government of Saskatchewan (GoS) are paid through GoS' central payroll system. The Public Service Commission (PSC) is responsible for the central payroll system.

[2] Full-time employees of the GoS are granted the full fiscal year Paid Time Off (PTO) accruals at the beginning of April, which is the beginning of the fiscal year. PTO includes vacation leave and sick leave. Employees must work the entire fiscal year in order to earn these PTO accruals. If an employee's employment comes to an end in the middle of a fiscal year, then the PTO accruals are pro-rated to determine how much time they have earned. Any earned but not taken vacation leave is paid out to the employee. However, if PTOs have been overdrawn, then an "overpayment" has occurred. The overpayment must be collected from the employee.

[3] The Complainant, an employee of the GoS, retired in September 2022. In a letter dated October 25, 2022 to the Complainant, the Human Resource Service Centre (HRSC) at PSC said that the Complainant had overdrawn certain amounts of vacation leave and sick leave. As such, there was a net overpayment amount that the employee was required to pay to the Minister of Finance. PSC carbon copied the employee's former supervisor and an accounting manager at the ministry from which the employee retired.

[4] On October 31, 2022, the Complainant contacted the Access & Privacy Officer at the PSC. The Complainant questioned why their former supervisor was carbon copied on the letter. The Complainant asserted they were not comfortable with their former supervisor having access to their personal financial information.

[5] On November 4, 2022, PSC responded by indicating that the Complainant's former supervisor was carbon copied because an overpayment would affect the "bottom line/budget" of the Complainant's former branch. Therefore, the former supervisor needed to be aware of the overpayment. PSC said:

> Your supervisor was cc'd because an overpayment would affect the bottom line/budget of your former branch. And your former supervisor needed to be aware of it. This is a standard notification process across government. Please note that the PSC processes payroll on behalf of a particular ministry and as a result cannot request a write off. An applicable ministry runs this process.

[6] On November 7, 2022, the Complainant requested that my office undertake an investigation.

[7] On November 16, 2022, my office notified the PSC and the Complainant that my office would be undertaking an investigation.

[8] My office received PSC's submission on December 22, 2022.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[9] PSC qualifies as 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 Appendix of *The Freedom of Information and Protection of Privacy Regulations*. Therefore, I find that I have jurisdiction to conduct this investigation.

2. Did a privacy breach occur?

[10] A privacy breach occurs when personal information is collected, used or disclosed in a way that is not authorized by FOIP (*Guide to FOIP*, Chapter 6, Updated January 18, 2023 [*Guide to FOIP*, Ch. 6], p. 265).

[11] To determine if a privacy breach has occurred, I must determine if personal information is present. If so, then I must determine if there was authority under FOIP for the collection, use, and/or disclosure of the personal information.

[12] First, I must determine if "personal information" as defined by subsection 24(1) of FOIP is present. Subsection 24(1)(j) 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:
>
> ...
> (j) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness;

[13] The amount owed by the Complainant (or the overpayment) would qualify as personal information as defined by subsection 24(1)(j) of FOIP.

[14] Next, I must determine if there was authority under FOIP for PSC to have disclosed the Complainant's personal health information to the Complainant's former supervisor. "Disclosure" means to share personal information with a separate entity (*Guide to FOIP*, Ch. 6, p. 183). In this case, a disclosure occurred when PSC carbon copied the Complainant's former supervisor.

[15] As described in the background, there was an overpayment to the Complainant. Therefore, the overpayment needed to be recovered. In its submission, PSC did not cite its authority under FOIP for disclosing the Complainant's personal information. I note that an overpayment could be considered a debt. Subsection 29(2)(f)(i) of FOIP provides:

> **29**(2) Subject to any other Act or regulation, personal information in the possession or under the control of a government institution may be disclosed:
>
> ...
> (f) for the purpose of locating an individual in order to:
>
> (i) collect a debt owing to the Crown in right of Saskatchewan or to a government institution by that individual;

[16] PSC could not have relied on subsection 29(2)(f)(i) of FOIP since it already at the Complainant's contact information. However, even if PSC was relying on subsection 29(2)(f)(i) of FOIP for the disclosure to the Complainant's former ministry, PSC must still take into consideration the need-to-know and data minimization principles. The need-to-know principle means that personal information should only be available to those employees in an organization that have a legitimate need-to-know that information for the purpose of delivering their mandated services (*Guide to FOIP*, Ch. 6, p. 16). The data minimization principle means that a public body should always collect, use and/or disclose the least amount of personal information necessary for the purpose (*Guide to FOIP*, Ch. 6, p. 17).

[17] According to the Government of Saskatchewan's *Salary Overpayment Recovery Guidelines* (last revised August 2021), the HRSC at PSC will send up to two letters to the employee to seek repayment. After the second letter, the individual ministry will be responsible for recovering the overpayment. The guidelines say:

> If the full amount is not collected from the last pay, up to two letters would be sent from the HRSC requesting payment. After the second letter, action would be taken through the Ministry Corporate Services area and may include use of a collection agency to recover amounts owing. If all other attempts to collect the overpayment in full are not successful, the amount owing would be collected should they return to work with the Government of Saskatchewan.

[18] In its submission to my office, PSC cited policies from the Financial Administration Manual. It explained that if the employee does not repay the overpayment to PSC after the second letter, then the individual ministry is responsible for pursing the collection. It said:

> In accordance with the Financial Administration Manual (FAM 3700 – Controls of Accounts Receivables; FAM 3710 – Accounts Receivables Records; FAM 3715 – Collection Activities – attached) the ministry is responsible to record promptly and accurately an accounts receivable in their financial records for the overpayment so that they can maintain vigorous control and collection activities. **If the employee were to not repay the overpayment monies to the PSC after the second letter has been sent, the collection activities move to the accounting area of the individual ministry where they continue to pursue the collection with the former employee. They are responsible for maintaining the correct outstanding balance of the accounts receivables for their ministry and have the authority to determine how they proceed with the collection whereas the PSC does not have this authority.**
>
> [Emphasis added]

[19] In this case, PSC's letter dated October 25, 2022, appears to have been the first letter sent to the Complainant. At the time the Complainant requested an investigation by my office (November 7, 2022), the Complainant asserted they had already repaid the overpayment. Therefore, there was no need for PSC to shift the collection activities to the individual ministry. In other words, PSC did not demonstrate that it was necessary to disclose the Complainant's personal information by carbon copying the former supervisor in order to seek repayment.

[20] In the course of my office's investigation, my office asked PSC to identify the former supervisor's "need-to-know" the information in the letter. PSC responded:

> PSC partners with and provides payroll and HR services for all GOS ministries. The individual ministries via the managers of each branch/area within the ministry are responsible for their own portion of the salary budget. They would need to be advised of the overpayment situation, understand what the cause was and use the knowledge gained to avoid the same scenario in the future. If PSC is successful in recouping the salary overpayment from the employee, the salary transactions to give the ministry back these funds would be indicated on the financial salary reports that managers have access to and that they would be anticipating based on their awareness of the overpayment.

[21] Based on the above, PSC makes two reasons why the Complainant's former supervisor had a need-to-know. First, PSC says the former supervisor needed to be advised so they can "avoid the same scenario" in the future. Second, PSC says it is so the manager can anticipate the salary transactions to be shown on financial salary reports if the PSC is successful in recouping the salary overpayment.

[22] However, these two reasons appear to be beyond the primary purpose of seeking repayment as set out in the Financial Administration Manual. In other words, PSC has not sufficiently demonstrated that the former supervisor had a need-to-know the personal information for the purpose of seeking repayment.

[23] I find that PSC has not identified its authority under FOIP for the disclosure of the Complainant's personal information. I also find that it identified how the Complainant's former supervisor had a need-to-know the personal information. I find that a privacy breach occurred.

[24] I recommend that the PSC send a letter to the Complainant to apologize for breaching their personal information.

[25] I recommend that PSC amend its procedures. Its procedures should indicate that PSC will only carbon copy individuals on letters where it has: 1) the authority to use and/or disclose personal information and 2) the use and/or disclosure is in accordance with the need-to-know principle.

III FINDINGS

[26] I find that I have jurisdiction to conduct this investigation.

[27] I find that PSC has not identified its authority under FOIP for the disclosure of the Complainant's personal information.

[28] I find that it identified how the Complainant's former supervisor had a need-to-know the personal information. I find that a privacy breach occurred.

[29] I find that a privacy breach occurred.

IV RECOMMENDATIONS

[30] I recommend that the PSC send a letter to the Complainant to apologize for breaching their personal information within 30 days of issuance of this Investigation Report.

[31] I recommend that PSC amend its procedures within 30 days of issuance of this Investigation Report. Its procedures should indicate that PSC will only carbon copy individuals on letters where it has: 1) the authority to use and/or disclose personal information under FOIP and 2) the use and/or disclosure is in accordance with the need-to-know principle.

Dated at Regina, in the Province of Saskatchewan, this 2nd day of May, 2023.

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