



INVESTIGATION REPORT 064-2022, 115-2022

Saskatoon Public Library

January 16, 2023

Summary:

The Saskatoon Public Library (SPL) required the Complainant (an employee) to submit a rapid antigen test result every 72 hours, since they had not submitted proof of full vaccination. The Complainant expressed their privacy concerns regarding SPL's policy. Further, after submitting their COVID-19 test results, the Complainant submitted privacy concerns regarding SPL sharing the test results with their manager and an employee who was not their supervisor. The Complainant was dissatisfied with SPL's response to their privacy concerns, so they requested an investigation by the Commissioner. The Commissioner found that SPL did not have legislative authority to collect the Complainant's COVID-19 test results, nor did SPL have authority to use the Complainant's personal information. The Commissioner recommended that SPL conduct a search of its Information and Technology (IT systems), including its email system, to ensure the Complainant's COVID-19 test results have been deleted/destroyed.

I BACKGROUND

- [1] The Complainant was on a leave from work, but scheduled to return on March 17, 2022 at the Saskatoon Public Library (SPL).
- [2] In an email dated March 11, 2022, SPL informed the Complainant that SPL employees who have not submitted a proof of full vaccination or a valid exemption are required to submit a rapid antigen test result every 72 hours.

[3] In an email dated March 16, 2022 to the SPL, the Complainant said that the Government of Saskatchewan had repealed *The Employers' COVID-19 Emergency Regulations* as of February 14, 2022. The Complainant said:

The Employers' Covid-19 Emergency Regulations was the only piece of legislation under the Saskatchewan Employment Act that allowed an employer to demand an employee to be vaccinated against Covid and provide proof of that vaccination or to be regularly tested for Covid. Without The Employers' Covid-19 Emergency Regulations, an employer can no longer demand vaccination/test and an employee is no longer required to comply with a vaccination/test demand made by an employer. It is puzzling that SPL still demanding vaccination/testing when the rest of the City of Saskatoon is complying with the law and discontinuing vaccination/testing requirements.

[4] On that same day, SPL responded to the Complainant. SPL asked the Complainant to confirm whether they would be submitting a rapid antigen test. The Complainant responded as follows:

The policy below is in violation of the Saskatchewan Employment Act and HIPA. Therefore, SPL's request is not legal.

[5] On that same day, SPL responded as follows:

SPL has a policy that requires employees to submit COVID test certificates with negative results if they have not submitted proof of vaccination. SPL is no longer asking employees to submit proof, but if they have not yet done so, then they submit test results. The policy is within our legal rights.

[6] On March 21, 2022, the Complainant wrote to SPL indicating their return to work was being placed on hold and they would contact SPL.

[7] On March 23, 2022, the Complainant sent another email to SPL with a series of questions regarding SPL's policy.

[8] On March 25, 2022, SPL wrote to the Complainant indicating that their gradual return to work was beginning on March 29, 2022. In that email, SPL stated that for SPL employees who have not submitted proof of full vaccination or a valid exemption are required to submit a rapid antigen test result every 72 hours.

[9] On that same day, the Complainant emailed SPL to see when they can expect a response to their questions regarding SPL's policy. SPL responded by indicating a meeting would be set up on March 31, 2022 to go over the Complainant's questions about the policy.

[10] On March 28, 2022, the Complainant asked for a response to their questions in writing.

[11] On that same day, SPL responded by referencing its "Testing and Vaccination Exposure Control COVID-19 Policy". It said that the Complainant will have an opportunity to review the policy and other policies on their first day back and they will answer any remaining questions the Complainant may have on March 31, 2022.

[12] The Complainant responded on the same day asserting the following:

You are expecting me to comply to an invasion of my privacy and are refusing to answer my questions to justify the invasion. I fail to see why it is so difficult to provide me with the law or regulation that permits a person's private information to be demanded by an employer.

[13] On April 6, 2022, a representative for the Complainant submitted a privacy complaint to my office on the Complainant's behalf.

[14] On April 29, 2022, SPL sent an email to staff who were required to submit COVID-19 test results. The email indicated that human resources would now be informing the employee's manager to confirm "work clearance". The email said:

HR will now cc your manager when emailing confirmation of work clearance, including the date and time of the test, so they can ensure compliance. If your shifts change or you are taking time away, please provide that information to the [email address] email account. Clear communication will help us to ensure that there is no work time missed while trying to process submissions and provide work clearance confirmation.

[15] On May 12, 2022, my office notified both the Complainant and the SPL that it would be undertaking an investigation into the Complainant's concerns regarding SPL's policy for collecting COVID-19 test results.

[16] In a letter dated May 20, 2022 to my office, SPL's lawyer provided the following documents:

- "COVID-19 Exposure Control Plan"
- "Testing & Vaccination Exposure Control COVID-19 Policy"
- "Personal Information Policy"

[17] SPL's lawyer also informed my office that it was discontinuing its "COVID-19 Program" by the end of May 2022.

[18] On June 6, 2022, the Complainant contacted my office with a separate but related privacy complaint. The Complainant referenced the April 29, 2022 email regarding SPL forwarding test results to managers. The Complainant alleged that human resources for SPL shared their test results with their supervisor and the "testing facility" on May 2, 2022, May 9, 2022, May 16, 2022, May 24, 2022, and May 30, 2022. Further, the Complainant detailed how human resources shared their May 9, 2022 test result with a person who was not their supervisor nor even within their department. The Complainant provided the following copies of emails to my office to substantiate their complaint:

- May 2, 2022 email from SPL's human resources to Complainant. The email was carbon copied to Complainant's manager and SPL's Director, Human Resources;
- May 9, 2022 email from SPL's human resources to Complainant. The email was carbon copied to an individual who the Complainant asserted is not their supervisor nor works within their department;
 - The Complainant provided a copy of a message that indicated that SPL's human resources attempted to "recall" this email;
- May 16, 2022 email from SPL's human resources to Complainant and COVID-19 test facility;

- May 24, 2022 email from SPL’s human resources to Complainant. The email was carbon copied to the Complainant’s supervisor; and
- May 30, 2022 email from SPL’s human resources to Complainant. The email did not carbon copy anyone.

[19] On July 14, 2022, my office notified both the Complainant and SPL that it was undertaking an investigation into whether SPL had the authority to use (or share) the Complainant’s COVID test results with the Complainant’s manager. The notice also stated my office would investigate SPL sharing the Complainant’s test results with a SPL employee who was not the Complainant’s supervisor.

[20] On October 20, 2022, my office received a submission from SPL.

[21] My office did not receive a submission from the Complainant. However, my office received an email dated October 21, 2022 from a representative of the Complainant. The email provided an update on the matters between the Complainant and SPL.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[22] SPL is a “local authority” pursuant to subsection 2(f)(vi) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Therefore, I find that I have jurisdiction to undertake this investigation.

2. Did SPL have authority under LA FOIP to collect the Complainants’ COVID test results?

[23] I must first determine if COVID test results qualify as “personal information” as defined by subsection 23(1) of LA FOIP. Subsection 23(1)(c) of LA FOIP defines “personal information” as:

23(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:

...

(c) information that relates to health care that has been received by the individual or to the health history of the individual;

[24] As COVID test results indicate an individual’s health history, I find that COVID test results qualify as personal information as defined by subsection 23(1)(c) of LA FOIP.

[25] Next, I must determine if SPL had authority under LA FOIP to collect the personal information.

[26] Local authorities must only collect personal information in accordance with section 24 of LA FOIP, which provides:

24 No local authority shall collect personal information unless the information is collected for a purpose that relates to an existing or proposed program or activity of the local authority.

[27] I note that at paragraph [21] of [Investigation Report F-2012-001](#), my office provided that there must be legislative authority to collect personal information:

[21] What is clear from all of the above is that **whatever personal information a public body collects**, it must be able to demonstrate that every data element in question is required to meet a legitimate business purpose and **that there is legislative authority to collect each**.

[Emphasis added]

[28] In its submission, SPL asserted that it was collecting test results and vaccination status to administer its COVID-19 Program. It cited subsection 3-8(a) of *The Saskatchewan Employment Act* as the basis for its program. Subsection 3-8(a) of *The Saskatchewan Employment Act* provides:

3-8 Every employer shall:

(a) ensure, insofar as is reasonably practicable, the health, safety and welfare at work of all of the employer’s workers;

[29] SPL also cited section 3-1 of *The Occupational Health and Safety Regulations, 2020* to support its program. Section 3-1 of *The Occupational Health and Safety Regulations, 2020* provides:

3-1 The duties of an employer at a place of employment include:

- (a) the provision and maintenance of plant, systems of work and working environments that ensure, as far as is reasonably practicable, the health, safety and welfare at work of the employer's workers;
- (b) arrangements for the use, handling, storage and transport of articles and substances in a manner that protects the health and safety of workers;
- (c) the provision of any information, instruction, training and supervision that is necessary to protect the health and safety of workers at work; and
- (d) the provision and maintenance of a safe means of entrance to and exit from the place of employment and all worksites and work-related areas in or on the place of employment.

[30] I note that the Government of Saskatchewan introduced *The Employers' COVID-19 Emergency Regulations* (Emergency Regulations), which came into effect on October 1, 2021. Subsection 4(1)(b) of the Emergency Regulations provided legislative authority for employers to collect COVID-19 test results:

4(1) On and after October 1, 2021, an employer may, for the purposes of clause 3-8(a) of the Act, require all of its workers to comply with one of the following:

...

- (b) to provide a valid negative COVID-19 test result to the employer at least every 7 days.

[31] Therefore, the Emergency Regulations provided legislative authority for SPL to collect COVID-19 test results from its employees. If subsection 3-8(a) of *The Saskatchewan Employment Act* and section 3-1 of *The Occupational Health and Safety Regulations, 2020* were sufficient on their own for employers to collect COVID-19 test results, then there would have been no need for the Government of Saskatchewan to enact the Emergency Regulations.

[32] On February 14, 2022, the Emergency Regulations were rescinded. As a result, there was no longer legislative authority for employers to collect COVID-19 test results.

[33] SPL requested the employee to provide COVID-19 test results after the Emergency Regulations were rescinded.

[34] I find that SPL did not have legislative authority to collect the Complainant's COVID-19 test results.

3. Did SPL have authority under LA FOIP to use (or share) the Complainants' COVID test results with the Complainant's manager and others?

[35] As described in the background of this Report, the Complainant submitted their COVID-19 test results to SPL's human resources. Then, SPL's human resources would send the test results to the Complainant's manager. In one instance, SPL's human resources sent a test result to another SPL employee who was not the Complainant's manager.

[36] To "use" personal information means to reference or manipulate personal information by the institution that has possession or control of the information ([Review Report 395-2019, 396-2019](#) at paragraph [14]). This means that the sharing of an employee's personal information would qualify as a "use".

[37] As a local authority, SPL must only use personal information as set out in section 27 of LA FOIP, which says:

27 No local authority shall use personal information under its control without the consent, given in the prescribed manner, of the individual to whom the information relates, except:

(a) for the purpose for which the information was obtained or compiled, or for a use that is consistent with that purpose; or

(b) for a purpose for which the information may be disclosed to the local authority pursuant to subsection 28(2).

[38] Since I have already found that SPL did not have authority to collect the Complainant's personal information, then it would not have authority to "use" the Complainant's personal information. I find that SPL did not have authority to use the Complainant's personal information.

[39] I note that SPL indicated in its submission that it permanently deleted emails containing test results on a regular basis. I recommend that SPL conduct a search of its Information and Technology (IT) systems (including its email system) to ensure the Complainant's COVID-19 test results have been deleted/destroyed. I recommend that SPL inform both my office and the Complainant of its search results and to confirm that, if it has located any of the Complainant's test results, that it has destroyed such records within 30 days.

[40] If the SPL's COVID-19 Program was ongoing, I would have recommended that SPL discontinue the program. However, I note that the SPL has discontinued its COVID-19 Program as of the end of May 2022.

III FINDINGS

[41] I find that SPL did not have legislative authority to collect the Complainant's COVID-19 test results.

[42] I find that SPL did not have authority to use the Complainant's personal information.

IV RECOMMENDATION

[43] I recommend that SPL conduct a search of its Information and Technology (IT) systems (including its email system) to ensure the Complainant's COVID-19 test results have been deleted/destroyed. I recommend that SPL inform both my office and the Complainant of its search results and to confirm that, if it has located any of the Complainant's test results, that it has destroyed such records within 30 days.

Dated at Regina, in the Province of Saskatchewan, this 16th day of January, 2023.

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