



INVESTIGATION REPORT 062-2016

Keewatin Yatthè Regional Health Authority

December 16, 2016

Summary:

The Commissioner received a complaint from an individual who was not satisfied with the outcome of the investigation conducted by Keewatin Yatthè Regional Health Authority (Keewatin) into her concern that Keewatin inappropriately used her personal information (employee conduct) with other Keewatin staff. She was also concerned that Keewatin had disclosed her personal information to members of the Saskatchewan Registered Nurses Association (SRNA), Saskatchewan Union of Nurses (SUN) and the Saskatchewan Association of Health Organizations (SAHO). Upon investigation, the Commissioner found that Keewatin had authority to use and disclose the personal information in each case.

I BACKGROUND

[1] On April 12, 2016, my office received a complaint from an individual asserting that Keewatin Yatthè Regional Health Authority (Keewatin) shared her personal information with various Keewatin senior management employees, the Saskatchewan Union of Nurses (SUN), the Saskatchewan Registered Nurses Association (SRNA) and the Saskatchewan Association of Health Organizations (SAHO) representatives. The Complainant felt that this was in direct violation of Keewatin policies, and that the sharing of information was done without her consent.

[2] The Complainant had first raised her concerns with Keewatin on January 5, 2016. Keewatin had responded April 8, 2016, indicating that Keewatin had authority to disclose her personal information as the Region's senior management needed to be aware of any

potential implications, complaints and/or liability the region may face and any disciplinary action that may be required. Keewatin did not speak to its authority to disclose the Complainant's personal information to the other organizations.

[3] On April 20, 2016, my office provided notification to Keewatin and the Complainant advising that my office would be undertaking an investigation.

III DISCUSSION OF THE ISSUES

[4] Keewatin is a "local authority" pursuant to subsection 2(f)(xiii) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

1. Is there personal information involved in this matter?

[5] Our customary analysis when dealing with a privacy complaint under Part IV of LA FOIP is to first determine whether there is personal information involved as defined in subsection 23(1) of LA FOIP. This subsection provides a number of examples of the types of information that would qualify as personal information. However, this list is not exhaustive.

[6] The information at issue is as follows:

- An email dated December 4, 2015 with two attachments
 - a two page letter (Letter A) dated November 27, 2015 addressed to the SRNA advising of the Complainant's misconduct
 - a one page letter (Letter B) dated December 4, 2015 advising the Complainant that her conduct had been reported to the SRNA, carbon copied to SUN and SAHO employees

[7] The December 4, 2015 email was copied to three senior Keewatin staff. The two letters attached in the email disclosed that the Complainant was the subject of an investigation involving a breach of confidentiality and code of ethics, as well as professional misconduct. The correspondence did not go into detail regarding the alleged incidents. However, at the time the email was sent a conclusion had not been reached in regards to

the alleged misconduct. This type of information is considered employment history within subsection 23(1)(b) of LA FOIP, which provides as follows:

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:

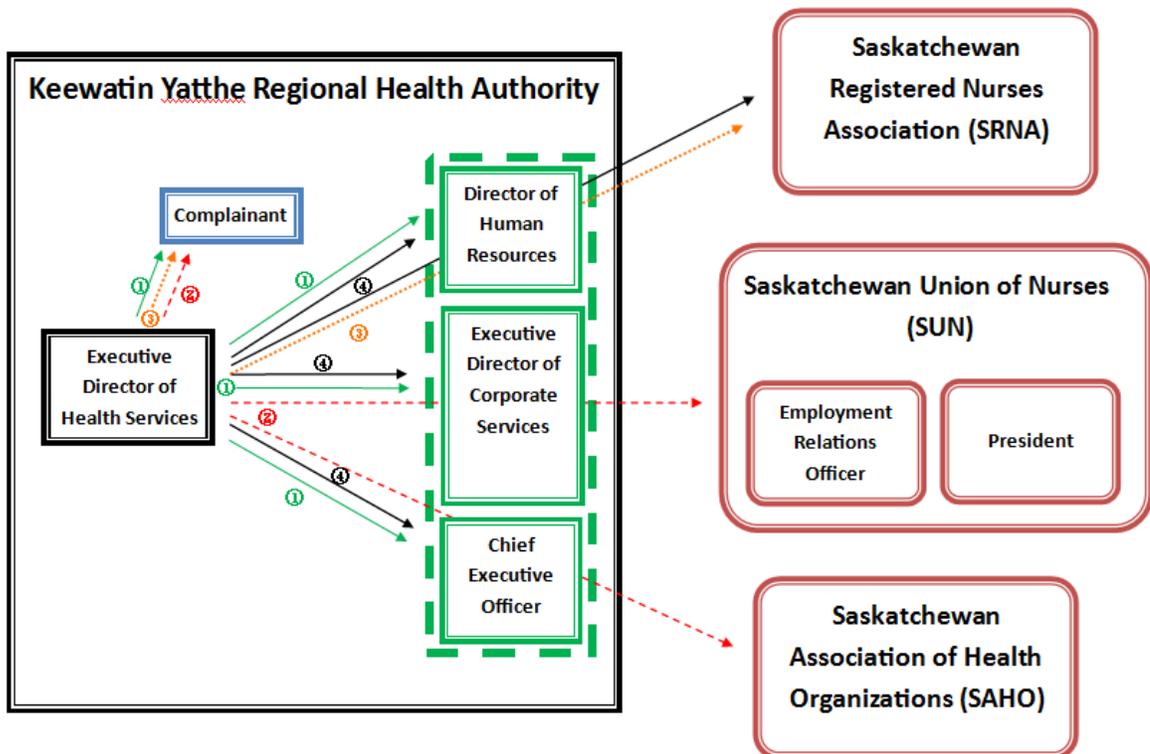
...

(b) information that related to the education or criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

[8] Therefore, there is personal information of the Complainant involved. As such, Keewatin is required to comply with the rules surrounding its use and disclosure in accordance with Part IV of LA FOIP.

2. Was there a “use” and “disclosure” of the Complainant’s personal information without authority?

[9] Based on the information provided by Keewatin, the following appears to be the flow of data involved in this case:



	Indicates an email sent on December 4, 2015 with two attached letters; letter A and letter B. Use.
	Indicates Letter A mailed on December 4, 2015. Disclosure.
	Indicates Letter B mailed on November 27, 2015. Disclosure.
	Indicates email with Letter B attached on November 27, 2015. Disclosure.

Flow #1 – Email from Executive Director of Health Services to Keewatin employees

[10] On December 4, 2015, an email was sent to the Complainant, containing an attached notice to the Complainant that her misconduct had been reported to the SRNA. A copy was also provided to three Keewatin senior employees.

[11] *Use* is the internal utilization of personal information by the public body and includes sharing of the personal information in such a way that it remains under the control of the public body. The sharing of personal information with these individuals would constitute a use as each is an employee of the health region.

[12] Keewatin asserted that the sharing of the Complainant’s personal information with the above senior management employees was within the purview of their job duties as:

They should be informed of such concerns and to be privy to a complaint to the SRNA about an employee in order to ensure the continued ethical operation of the health region and the security of its patients.

[13] On August 3, 2016, Keewatin provided my office with further information regarding why the Complainant’s personal information was provided to the senior management employees:

- Director of Human Resources: Given the possibility that disciplinary action may be required as a result of the findings of the investigation of November 15, 2015, the employee had a legitimate interest in the outcome of the OH&S investigation in order to ensure such discipline was implemented.

- Executive Director of Corporate Services: Legitimate need to know with minimal amount of information provided as all Labour Relations issues pose a potential risk/threat to the organization.
- Chief Executive Officer: Responsible for all operations of the Region and must be advised/informed of potential Labour Relations concerns/issues to ensure the ethical operation and the security of its patients.

[14] The Complainant advised that it was unnecessary for Keewatin to share this information, as the issues contained in the letters had yet to be substantiated or resolved.

[15] Did Keewatin have the legislative authority to share the Complainant's personal information with its senior management? Subsection 28(2)(a) of LA FOIP could give Keewatin the authority to use the information internally, as the information was compiled by Keewatin staff in the process of investigating the allegations of misconduct against the Complainant. Subsection 28(2)(a) of LA FOIP provides:

28(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

- (a) For the purpose for which the information was obtained or compiled by the local authority or for a use that is consistent with that purpose;

[16] One principle underlying Part IV of LA FOIP is the *data minimization* principle. *Data minimization* means that the local authority should always collect, use and/or disclose the least amount of personal information necessary for the purpose.

[17] Based on what has been provided to my office, it appears that the information provided to the above employees was reasonably related to their job requirements, and was the minimal amount necessary. Therefore, it appears the principle of data minimization was followed by Keewatin.

[18] I find that Keewatin had authority to use the personal information of the Complainant related to the Complainant's conduct with the Director of Human Resources, the Executive Director of Corporate Services and the CEO of Keewatin.

[19] However, Keewatin should review its internal employee misconduct policies and procedures to ensure that they have clearly laid out the authorities in LA FOIP allowing for use of personal information for this purpose.

Flow #2 – Letter B mailed to SAHO and SUN

[20] Letter B, contained in the email forwarded to the Complainant on December 4, 2015, is addressed to the Complainant and briefly states that the Complainant has been reported to the SRNA for misconduct. At the bottom of the letter, it is written that the hard copy of the letter had been mailed to a Labour Relations Officer at SAHO and the Employee Relations Officer and President of SUN.

[21] SAHO and SUN are not part of the health region; therefore any personal information shared is a disclosure.

[22] *Disclosure* is the sharing of personal information with a separate entity, not a division or branch of the public body in possession or control of that information.

[23] Keewatin asserted that the authority relied upon to disclose the Complainant's personal information to the SUN employees was Article 25.02c of the SUN Collective Agreement, which provides:

If an Employee is reported by the Employer to her professional association, the Employee shall be advised within five (5) calendar days. The Employee shall receive a copy of the report. If the Employee is fully exonerated by the professional association, all reference to the matter shall be removed from the Employee's personnel file and destroyed.

[24] Keewatin however did not refer to authority under LA FOIP allowing disclosure. Subsection 28(2)(a) of LA FOIP provides:

28(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

(a) For the purpose for which the information was obtained or compiled by the local authority or for a use that is consistent with that purpose;

[25] Subsection 10(g)(i) of the LA FOIP Regulations provides:

10 For the purposes of clause 28(2)(s) of the Act, personal information may be disclosed:

...

(g) to any person where the information pertains to:

(i) the performance of any function or duty or the carrying out of any responsibility by an officer or employee of a local authority; or

[26] SUN is a Union that represents Registered Nurses, Registered Nurse Practitioners, Registered Psychiatric Nurses and graduates in Saskatchewan. SUN is obligated to bargain terms and conditions of employment for their members, as well as represent members during grievance or rights arbitration.

[27] Section 4.02(b)(3) of the Collective Agreement between SUN and SAHO concerning harassment, states that:

“(3) incidents are investigated promptly, objectively, and in a sensitive confidential manner. Investigations shall be carried out in accordance with specific harassment policies and the Union shall be advised upon initiation of a formal investigation and shall be kept advised;”

[emphasis added]

[28] As SUN is the Union that would represent the Complainant, as an Occupational Health and Safety investigation had occurred, it was reasonable for Keewatin to notify SUN that one of their members had faced an investigation relating to professional misconduct and harassment. Therefore, I find that the disclosure of the letter to the SUN employees was authorized pursuant to subsection 28(2)(a) of LA FOIP and subsection 10(g)(i) of the LA FOIP Regulations. It was disclosed for a purpose for which it was compiled by Keewatin.

[29] Therefore, there is no need to assess any application of subsection 28(2)(n)(i) of LA FOIP.

[30] Letter B was also shared with a Labour Relations Officer at SAHO. SAHO is a non-profit, non-government association responsible for providing collective bargaining, labour relations and classification and job evaluation services to health regions. They also

provide advice on arbitration and administer the Provincial Arbitration Committee (PAC).

[31] Keewatin asserted that subsection 28(2)(s) of LA FOIP and subsections 10(b) and 10(f) of the LA FOIP Regulations gave them the authority to disclose the Complainant's personal information to the SAHO employee.

[32] Subsection 28(2)(s) of LA FOIP states:

28(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

...
(s) as prescribed in the regulations

[33] Subsections 10(b) and 10(f) of the LA FOIP Regulations state:

10 For the purposes of clause 28(2)(s) of the Act, personal information may be disclosed:

...
(b) to an individual or body providing consulting or other services to a local authority if the individual or body agrees not to make a subsequent disclosure of the information in a form that could reasonably be expected to identify the individual to whom it relates;

...
(f) for the purpose of commencing or conducting a proceeding or possible proceeding before a court or tribunal;

[34] The personal information provided in the December 4, 2015 letter to the SAHO employee was regarding a notice to the Complainant that her conduct had been reported to the SRNA. As SAHO administers the PAC and with the report to the SRNA, it is reasonable to believe that the issues brought forward by Keewatin may lead to arbitration.

[35] Therefore, I find that Keewatin had authority to disclose the Complainant's personal information to SAHO pursuant to subsection 28(2)(s) of LA FOIP and subsections 10(b) and 10(f) of the LA FOIP Regulations.

Flow #3 – Letter A mailed to SRNA

[36] Included in the December 4, 2015 email was Letter A, dated November 27, 2015, which was addressed to an Advisor in the Competence Assurance and Research branch of the SRNA. According to the SRNA website, this branch ensures competent, caring, knowledge-based registered nursing for Saskatchewan. The letter was regarding the misconduct investigation of the Complainant.

[37] The SRNA is a regulatory body that oversees registered nurses and nurse practitioners in Saskatchewan. It is accountable for ensuring members are competent by establishing requirements for licencing, enforcing practice standards and the Code of Ethics, and establishing and maintaining a professional conduct process.

[38] Keewatin asserted that subsection 28(2)(s) of LA FOIP and subsections 10(b) and 10(f) of the LA FOIP Regulations gave them the authority to disclose the Complainant's personal information.

[39] As discussed in Flow #2, subsections 10(b) and 10(f) state that personal information may be disclosed to a body providing consulting or other services to a public body, as well as for the purpose of commencing a proceeding or possible proceeding before a court or tribunal. Though I agree that subsection 10(f) applies in this situation, 10(b) does not.

[40] Subsection 10(d) of the LA FOIP Regulations may apply This subsection provides:

10 For the purposes of clause 28(2)(s) of the Act, personal information may be disclosed:

...

(d) to a professional association or professional regulatory body for the purpose of carrying out the lawful activities of the association or body;

[41] As the SRNA is a regulatory body, it is appropriate that they be notified of a registered nurse or nurse practitioner's alleged misconduct, so that they may initiate an inquiry into the matter if they see fit.

[42] Therefore, I find that Keewatin had authority to disclose the Complainant's personal information to the SRNA pursuant to subsection 28(2)(s) of LA FOIP and subsections 10(d) and 10(f) of the LA FOIP Regulations.

Flow #4 – Email to SRNA and Keewatin staff

[43] On November 27, 2015, an email was circulated to the Competence Assurance and Research branch of the SRNA, and was copied to three senior Keewatin employees. Contained in this email was two attachments, one of which being Letter A, as discussed above. The second attachment is not related to this investigation.

[44] The Keewatin senior employees were as follows:

- the Director of Human Resources, Keewatin
- the Executive Director of Corporate Services responsible for Risk Management, Keewatin
- the Chief Executive Officer, Keewatin

[45] The sharing of the Complainant's personal information by Keewatin with the SRNA is considered a disclosure.

[46] As discussed in Flow #1, I find that Keewatin had authority to use the personal information of the Complainant related to the Complainant's conduct with the Director of Human Resources, the Executive Director of Corporate Services and the CEO of Keewatin.

[47] Regarding the Complainant's personal information being sent to the Competence Assurance and Research branch of the SRNA, this is considered a disclosure.

[48] As discussed in Flow #3, I find that Keewatin had the authority to disclose the Complainant's personal information to the SRNA for the purposes already noted.

[49] Keewatin did not provide their authority under LA FOIP to my office to use and disclose the Complainant's personal information. It was necessary for my office to research Keewatin's authority under the Act and review the various agreements, between the health region, SUN, SAHO and the SRNA. It would have been better if Keewatin was able to communicate their authority more clearly. I would recommend they create a policy that clearly outlines their authority to use personal information during and at the conclusion of an alleged misconduct investigation, identify those who need to know, when they will be informed and how they will be informed.

IV FINDINGS

[50] I find that there was personal information of the Complainant involved in this matter.

[51] I find that Keewatin had authority to use and disclose the personal information of the Complainant pursuant to subsections 28(2)(a) and 28(2)(s) of LA FOIP and subsections 10(b), 10(d), 10(f), and 10(g)(i) of the LA FOIP Regulations.

V RECOMMENDATION

[52] I recommend that Keewatin update their policies regarding its authority to use personal information during and at the conclusion of an alleged misconduct investigation, identify those who have a need to know, when they will be informed and how they will be informed.

Dated at Regina, in the Province of Saskatchewan, this 16th day of December, 2016.

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