

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

INVESTIGATION REPORT 115/2013

Saskatoon Public Library

Summary: The Complainant, a former employee at Saskatoon Public Library (SPL) became concerned at how SPL collected, used and disclosed her personal information after she reported that she was sexually assaulted in the workplace. Further, she became concerned at SPL's collection of her personal information for the purposes of sick leave. The Commissioner found that SPL had authority under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to collect and use the employee's personal information in its investigation of an allegation of workplace violence but that SPL did not disclose the Complainant's personal information to the Saskatoon Police Service in accordance with subsection 28(2)(g) of LA FOIP. The Commissioner also found that while SPL had authority to collect the Complainant's personal information for the purposes of sick leave, SPL did not necessarily abide by the data minimization principle. The Commissioner made several recommendations to SPL, including revising its policies so that it abides by the data minimization and need-to-know principles.

I BACKGROUND

[1] On September 5, 2013, my office received a 40-page letter with enclosures from the Complainant. She, a former employee of the Saskatoon Public Library (SPL), was concerned about how SPL had collected, used, and disclosed her personal information. She also alleged her computer at work had been remotely accessed and her personal emails were viewed.

[2] Her concerns can be broken down into four parts. The first part deals with her reporting to the Deputy Library Director that she was sexually assaulted by another employee in

the workplace. She had emailed the Deputy Library Director in an email dated December 31, 2012. In her letter to my office, she alleged (in the third person) that the email was distributed to others in a meeting and private information about her, including information about her marriage, was shared:

The contents of the email had been sent to [Deputy Library Director] in confidence and had been distributed to all those present at the meeting and likely others, without the complainant's knowledge or consent, either verbal or written.

...

Private details and aspects about her personal life that she had kept under wraps because they were not related to the workplace became known to everyone in the room and to whomever else has read the notes taken that day, along with whatever post-meeting adjustments have been made.

- [3] The second part of her concerns deals with how SPL had disclosed her allegation of sexual assault to the Saskatoon Police Service. In her letter to my office, she recounted a conversation between her and the Deputy Library Director. In that conversation she said the following to her Deputy Library Director:

I have repeatedly asked you to justify your decision to disclose the sexual assault to the police and why you were in such a rush to get there before I could and why you felt intimidating me for information was reasonable. I asked you in the meeting on December 31 and in emails since then, and I've asked today - multiple times - why you've chosen to share personal health information and private details about my life to an unknown number of people. I've asked to be notified about who those people are and what they were told and you have not answered me.

- [4] The third part of her concerns deal with the challenges the Complainant faced as she submitted many medical certificates as she attempted to seek approval for sick leave. Her complaint letter to my office said the following:

...the complainant obtained a Saskatchewan Medical Association medical certificate from her general physician for sick leave from work (January 17 to March 15).

The complainant provided it to the employer on January 16...

...

January 30 - A letter is sent out by registered mail.... In the letter, [Acting Human Resources Manager] tells the complainant that she must contact Occupational Health Consultant (OHC) [Occupational Health Consultant] by February 1 as her sick leave -

approved not even two weeks previously by [Acting Human Resources Manager] herself - has been revoked.

...

[Occupational Health Consultant] provides the complainant with a letter...that she needs to bring to a doctor for a medical certificate containing the medical diagnosis that prevent her from working, what are the restrictions when she returns to work, what is the prognosis for recovery and return to work, and is there anything SPL can do to assist her recovery.

March 2 - Complainant obtains a second medical certificate...from [name of a doctor], another physician based out of the same clinic as her own doctor, [name of Complainant's doctor].

The employee provides the note from [Occupational Health Consultant] and relays what the OHC told her-that specific diagnosis are needed. ...

With the patient's consent, [name of doctor] writes a note and provides the two diagnosis/medical issues requiring her to not work at SPL.

March 5 - [Occupational Health Consultant] rejects the 2nd note because, "This isn't the same physician who wrote the first one."

March 7 - The complainant obtains a 3rd medical certificate.

...

The 3rd note is brought by hand to [Occupational Health Consultant] immediately.

...

[Occupational Health Consultant] tells her that yes, it is, and her leave is now approved, and that [Occupational Health Consultant] has told [Acting Human Resources Manager] that the employee has provided sufficient medical information to validate her medical leave.

...

April 2 - [Occupational Health Consultant] emails the complainant and tells her that after providing her with the letter on February 22 covering what was required in a medical certificate, that [Occupational Health Consultant] then changed the requirements but did not mail out a new letter. [Occupational Health Consultant] alleges that she emailed the complainant with what extra medical details were needed but that weren't included in the February 22 letter.

The complainant telephones [Occupational Health Consultant] and says that she has not received any amended letters to take to her physician and was unaware that [Occupational Health Consultant] had changed the demands. The complainant reminds [Occupational Health Consultant] that her doctor's note from March 7 covers all the requirements stated in the February 22 letter and that [Occupational Health

Consultant] has told her and [Acting Human Resources Manager] on March 7 that the leave was approved.

...

April 12 - In a face-to-face meeting with [Occupational Health Consultant], the employee is informed that because she "made about harming yourself" that a psychological evaluation would be needed.

...

April 22 - The complainant obtains a 4th medical certificate...

...

April 25 - The complainant meets with [Occupational Health Consultant] who refuses to even consider the 4th certificate because [name of Complainant's doctor] is "biased."...

- [5] Another issue arose when the Complainant learned that the Occupational Health Consultant faxed a letter dated July 17, 2013 to a doctor. The Occupational Health Consultant sought the Complainant's personal information from the doctor. In her letter to my office, the Complainant stated the following:

The complainant also learns that on the morning of July 17th, prior to her appointment with [name of a doctor], that [Occupational Health Consultant], who had never been given consent to contact any of the employee's health care providers, faxed a multi-page letter (see attached) to [name of a doctor] without the employee's permission or knowledge or notification after the fact.

- [6] Afterwards, the Complainant signed a consent form dated July 30, 2013 that enabled the Occupational Health Consultant to collect limited types of personal information. However, the Complainant alleges that the Occupational Health Consultant attempted to collect far more information than the consent form authorized. She wrote in her letter to my office:

August 6 - In a phone call with [name of a doctor] that morning, the complainant is informed that [Occupational Health Consultant] ignored the limitations of the consent form and requested the diagnostic information about the employee; her mental states, moods, and other psychological, personal health information.

- [7] Finally, the fourth part of the Complainant's concern includes how she felt that her computer was inappropriately accessed.

- [8] In summary, the following are the issues addressed in this investigation report:

1. Collection and use of personal information by SPL
 - a. Details of the Complainant's personal life discussed at the meeting.
2. Disclosure of personal information by SPL
 - a. Reporting of the alleged sexual assault to the Saskatoon Police Service.
3. Collection of personal information for sick leave
 - a. Consent form signed by the Complainant and the indirect collection of personal information by Occupational Health Consultant.
4. Safeguarding of personal information
 - a. Allegations of inappropriate access to work computer

II DISCUSSION OF ISSUES

[9] SPL is a local authority pursuant to subsection 2(f)(v) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

1. Is personal information involved?

[10] The definition of personal is found at subsection 23(1) 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:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

...

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

...

(g) correspondence sent to a local authority 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;

[11] The first part of the Complainant's concern includes the email she had sent to the Deputy Library Director dated December 31, 2012 where she reported that she was sexually assaulted by another employee in the workplace. I find that this would qualify as personal information pursuant to subsection 23(1)(g) of LA FOIP. Also included in the first part of the concern is that details of the Complainant's personal life, including information about her marriage, was shared at the meeting. I find this would qualify as personal information pursuant to subsection 23(1)(a) of LA FOIP.

[12] The second part of the Complainant's concern includes SPL's disclosure of the allegation of sexual assault, as described in her December 31, 2012 email, to the Saskatoon Police Service. As stated in the preceeding paragraph, I find that the information contained in the email would qualify as personal information pursuant to subsection 23(1)(g) of LA FOIP.

[13] The third part of the Complainant's concern includes medical certificates and information about the Complainant's health. I find that such information would qualify as personal information pursuant to subsection 23(1)(c) of LA FOIP.

2. Did SPL have the authority to collect the Complainant's personal information?

[14] I must determine if SPL had authority to collect the Complainant's personal information, including information regarding her marriage.

[15] In the past, my office defined the term "collection" as the gathering, acquiring, receiving or obtaining personal information.

[16] Local authorities should be collecting personal information pursuant to section 24 of LA FOIP. Section 24 provides as follows:

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.

[17] Local authorities have the authority to collect personal information in its investigation into allegations of workplace violence. That would be related to its human resources and/or occupational health and safety programs and activities.

[18] I find that SPL had authority to collect the Complainant's personal information as it was collected in the course of its investigation into allegations of workplace violence.

3. Did SPL have the authority to use the Complainant's personal information?

[19] In the past, my office has defined the term "use" as the internal utilization of personal information by a public body and includes sharing of the personal information in such a way that it remains under the control of that public body.

[20] Local authorities are to use personal information in accordance with section 27 of LA FOIP, which provides:

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).

[21] I find that that SPL has the authority to use the information it collected in the course of its investigation to make findings.

4. Did SPL follow the need-to-know principle in its use of the Complainant's personal information?

[22] Even though I find that SPL has the authority to use the Complainant's personal information, SPL should be using the personal information in accordance with the need-to-know principle. This principle is 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 mandated services.

[23] The Complainant's concern was the discussion of her personal information, including information about her marriage, at the December 31, 2012 meeting. There seems to have been a discrepancy in the understanding of the purpose of the meeting. According to her letter to my office, the Complainant's understanding of the meeting was to discuss "computer misuse and hate mail". According to SPL's submission to my office, the meeting was "to report the results of the investigation into the allegations of computer tampering...and discussion of the alleged inappropriate sexual activity in the workplace." According to SPL, the original scheduled attendees for the meeting were the Deputy Library Director, the Manager of IT Services, Union representatives, and the Complainant.

[24] However, hours before the December 31, 2012 meeting, the Complainant had sent an email to the Deputy Library Director that asserted that she was sexually assaulted in the workplace. This resulted in SPL inviting the acting Manager of Human Resources and a Labour Relations Consultant from the City of Saskatoon to the meeting.

[25] The Complainant described the attendees of the meeting as "strangers" with the exception of her boss, the Deputy Library Director. She did not expect that the email that she had sent hours beforehand would be raised at the meeting nor did she expect "private details and aspects about her personal life" to be raised. In other words, there is a question of whether all attendees of the meeting have a need-to-know such information.

- [26] Based on the allegations, it is conceivable that each attendee of the meeting had a need-to-know at least some of the Complainant's personal information in order to carry out his/her role in the investigation into the allegations. For example, the Manager of IT Services would have needed to know some information in order to conduct an investigation into the allegations of computer misuse or tampering. However, he would not need to know any of the Complainant's other personal information, such as allegations of sexual assault. SPL does assert in its submission to my office that the Manager of IT Services exited the meeting after he presented his findings of his investigation into the Complainant's allegations of computer tampering by another employee. This is a demonstration of abiding by the need-to-know principle.
- [27] It is also conceivable that, based on the allegations of sexual assault, that the others present at the meeting would have had a need-to-know to carry out their role in the investigation into the Complainant's allegations.
- [28] However, there seems to have been many factors that led to the Complainant's concern about the discussion of her personal information at the meeting. There was a discrepancy in the understanding of the purpose of the meeting, the email that was sent hours before the meeting that led SPL to invite additional personnel to the meeting, and the fact that the Complainant felt that the attendees at the meeting were "strangers".
- [29] I recommend that SPL amend its relevant policies/procedures that it communicates the purpose of meetings, in writing, to all attendees of meetings to avoid surprises in the future. Attendees and their role in the meeting should also be identified. If there is a sudden turn of events that would add to the purpose of the meeting, such as the email sent hours before a scheduled meeting, then I suggest that the scheduled meeting be postponed until the new purpose is communicated clearly to the attendees of the meeting. This would assist affected individuals, such as the Complainant in this case, to be prepared for what will be raised at the meeting.

5. Did SPL have authority to disclose the Complainant's allegation of sexual assault to the Saskatoon Police Service?

[30] One of the Complainant's concerns was that SPL reported her allegations of sexual assault to the Saskatoon Police Service.

[31] Local authorities are to disclose personal information in accordance with section 28 of LA FOIP. In the past, my office has defined disclosure as the sharing of personal information with a separate entity, not a division or branch of the public body or trustee in possession or control of that record/information.

[32] Subsection 28(2)(g) of LA FOIP allows local authorities to disclose personal information when a prescribed law enforcement agency requests the information. It 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:

...

(g) to a prescribed law enforcement agency or a prescribed investigative body:

(i) on the request of the law enforcement agency or investigative body;

[33] In order to abide by subsection 28(2)(g) of LA FOIP, then, a law enforcement agency such as the Saskatoon Police Service must approach the local authority to request information.

[34] An undated letter by the Saskatoon Police Service to the Complainant stated that the alleged sexual assault was first brought to the Saskatoon Police Service attention by SPL. I find that SPL did not abide by subsection 28(2)(g) of LA FOIP.

[35] I recommend that SPL amend its policies and procedures so that when it discloses personal information to law enforcement agencies, the disclosure will be in accordance with subsection 28(2)(g) of LA FOIP.

6. Did SPL have authority to collect the Complainant's personal information for the purposes of sick leave?

[36] As described in the background section, the Complainant had submitted many medical certificates to the Occupational Health Consultant in attempts to gain approval for a leave.

[37] On many occasions, the Occupational Health Consultant listed the information she sought from the Complainant. For example, in a letter dated February 22, 2013, she stated the following:

...the following information is required from a licensed healthcare practitioner:

1. Are you fit to return to work without restriction?

If the answer to question# 1 is no, then the following questions apply:

2. What is the nature of your current illness (what is preventing you from being able to attend work)?
3. What are your current objectively based medical restrictions to return to modified/alternate work?
4. What is your prognosis for recovery and return to your regular work?
5. Is there anything that the Saskatoon Public Library can do or provide to assist you in a speedy recovery and successful return to work?

[38] Further, in an email dated March 4, 2013 to the complainant, the Occupational Health Consultant said she sought the following information:

When you see your doctor this week please have him indicate:

- the prognosis for recovery and return to regular work
- what the current objectively based medical restrictions to return to modified/alternate work
- if you are capable of returning to full duties but not hours for him to indicate
- And if you are capable of returning to full duties and hours for him to indicate that

- [39] In a letter dated April 10, 2013, the Occupational Health Consultant asserted that because the Complainant had indicated self-harm in an email dated March 16, 2013, SPL required an independent psychological evaluation:

Further to the comments you made in an email sent on March 16, 2013 indicating self harm; I have requested times when we could meet to discuss what needs to occur prior to any potential return to work. However, to date have not received any dates from you.

To ensure a return to work is appropriate and that you are receiving the care needed the SPL requires an independent psychological evaluation.

- [40] In a letter dated July 12, 2013, the Occupational Health Consultant wrote to the Complainant. The letter contained four questions that she required from the Complainant's psychiatrist:

The specific questions that must be addressed are:

1. Is a return to full duties and hours as a ... appropriate for [Complainant]?
2. Is a return to any work appropriate for [Complainant] (she has applied for a few different positions a [sic] Saskatoon Public Library)?
3. In regards to the comments about self harm, is [Complainant] receiving the care and support she needs?
4. Is there any disability that requires an accommodation present and, if so, what are the objective restrictions and how can SPL better assist [Complainant]?

- [41] Further, in a letter dated July 17, 2013, the Occupational Health Consultant sent a letter to a psychiatrist seeking the following information about the Complainant:

1. Is a return to full duties and hours as a ... appropriate for [Complainant]?
 - If no please provide medically supported restrictions for review for an immediate accommodation.
2. Is a return to any work appropriate for [Complainant] (she has applied for a few different positions a [sic] Saskatoon Public Library)?
3. In regards to the comments about self harm, is [Complainant] receiving the care and support she needs?
4. Is there any disability that requires an accommodation present and, if so, what are the objective restrictions and how can SPL better assist [Complainant]?

- [42] Leaves, or absences from work, would fall under the human resources activity of a local authority. Therefore, I find that SPL would have authority pursuant to section 24 of LA FOIP to collect personal information.
- [43] However, SPL must collect information in accordance with the data minimization rule. Many of the questions, including the question on the prognosis for recovery and return to regular work, are appropriate. Such information would enable SPL to plan for how long the Complainant may be absent. However, SPL did not show my office why it would need to know the nature of the Complainant's illness or if the Complainant is "receiving the care and support she needs" for the purposes of sick leave. There may be circumstances in which understanding the nature of an illness may be appropriate, but SPL has not demonstrated why this information is appropriate in this case.
- [44] Therefore, I find that some of the questions asked by SPL were not in accordance to the data minimization rule.
- [45] My office had recommended that SPL amend its sick leave policy to ensure it limits its collection of personal information to what is absolutely necessary for the purposes of sick leave and the return to work program.
- [46] SPL responded in its letter dated January 27, 2015 by stating that the Complainant was uncooperative in the return to work process. An employee being uncooperative in the return to work process, while challenging, still would not justify requesting more information it requires for sick leave and for the return to work program.
- [47] SPL also referred my office to its harassment policy where it asserts that confidentiality will be maintained. Confidentiality is important but it is not the equivalent to data minimization.
- [48] I recommend that SPL amend its sick leave policy to ensure it limits its collection of personal information to what is absolutely necessary for the purposes of sick leave and the return to work program.

7. Was the consent form sufficient for the collection of the Complainant's personal information?

[49] The Complainant alleges that the Occupational Health Consultant attempted to collect far more information than she had authorized in a consent form she had signed. The consent form was dated July 30, 2013 and authorized the Occupational Health Consultant to collect the following information about the Complainant from one particular doctor:

- The general nature of the injury or illness,
- Current medical restrictions and duration of restrictions,
- Prognosis for recovery and/or return to work.

[50] However, as described in the background section, the Complainant alleged that through a telephone call with the doctor on August 6, 2013, she learned that the Occupational Health Consultant had attempted to collect far more information than she had authorized in the consent form.

[51] Based on the materials provided to my office from both parties, it does not appear that the doctor disclosed any personal information about the Complainant to the Occupational Health Consultant. Therefore, I do not need to determine if there was any unauthorized collection of personal information.

[52] However, I acknowledge that the Complainant is taking issue with the Occupational Health Consultant's attempts at collecting her personal information from the doctor. As I mentioned in the background section, there was a July 17, 2013 letter faxed by the Occupational Health Consultant to the doctor in an attempt to collect the Complainant's personal information. At the time this letter was faxed, the Complainant had not signed the consent form. Had the doctor responded to the letter and disclosed any of the Complainant's personal information, then I would have found that there would be no authority under LA FOIP for the collection of personal information.

[53] I recommend that SPL incorporate into its policies and procedures that it identifies its authority under LA FOIP prior to its collection of personal information. In other words, I

recommend that SPL have the consent form signed prior to any attempts to collect personal information from the doctor be made.

8. Does SPL have appropriate safeguards in place to prevent employee snooping?

[54] In order for information to be managed in accordance with LA FOIP appropriate safeguards need to be in place. For example, there should be safeguards in place to ensure employees only access the information they require for their job. Or, safeguards should be in place to ensure that information is not inadvertently disclosed.

[55] The Complainant alleged that a coworker had inappropriate access to her work computer and accessed her personal information. Her reasons for believing this had happened were because:

- She had received a letter through Canada Post at her home address in December 2012;
- Her home address is not widely known but is contained within the records of SPL. Therefore, she believes someone from within SPL had accessed SPL's records to obtain her home address;
- The letter contained alternate names that could only be known by someone reading her private emails;
- She has safeguards on her home computer network that would have warned her of intrusion attempts and unauthorized access into the network;
- Her Internet Service Provider advised her that it reviewed its data and nothing suspicious occurred in December 2012.

[56] The Manager of IT Services at SPL investigated the matter and presented his investigation findings to the Complainant in a meeting that took place on December 31, 2012. He had found no evidence of computer tampering. According to SPL's submission, SPL had presented its findings in a meeting on January 14, 2013 and again, in writing, in March 2013 to the Complainant.

- [57] SPL did not provide my office with any further detail regarding its investigation into the Complainant's allegations, or what safeguards it has in place to prevent the Complainant's coworker from snooping into her private emails.
- [58] I have not received material to determine if the Complainant's coworker did or did not access her private emails. My office's goal in investigations, though, is to ensure that local authorities have appropriate safeguards to minimize the likelihood of privacy breaches going forward.
- [59] In the past, my office has recommended that public bodies have auditing capabilities of its employees' use into electronic system. Further, my office has recommended that random but regular audits be conducted on employees to ensure that employees are only accessing the information they require to complete job duties.
- [60] If SPL does not already have auditing capabilities of its employees' use of their electronic systems, then I recommend that it implement such capabilities. Further, if no policies or procedures already exist, I recommend that SPL create a policy that it will conduct random but regular audits of employees' use of electronic systems to ensure they are only accessing the information they require to complete their job duties.

IV FINDINGS

- [61] I find that there was personal information involved in this matter.
- [62] I find that SPL did have authority pursuant to section 24 of LA FOIP to collect the Complainant's personal information for the purpose of its investigation into the Complainant's allegations.
- [63] I find that SPL did have authority pursuant to section 27 of LA FOIP to use the Complainant's personal information for the purpose of its investigation into the Complainant's allegations.

[64] I find that SPL did not have authority to disclose the Complainant's personal information to the Saskatoon Police Service.

[65] I find that SPL had authority to collect personal information pursuant to section 24 of LA FOIP for purposes of sick leave but it may have asked for personal information that may not have been in accordance with the data minimization principle.

V RECOMMENDATIONS

[66] I recommend that SPL revise its *Policy on Workplace Violence* to require staff to abide by the data minimization principle and the need-to-know principle.

[67] I recommend that SPL revise relevant policies and procedures so that attendees to a meeting are informed of the purpose of meetings that take place in the course of an investigation, and that each attendee's role in the investigation is identified prior to a meeting taking place.

[68] I recommend that SPL revise its *Policy on Workplace Violence* to ensure it identifies its legal authority prior to disclosing matters to a law enforcement agency.

[69] I recommend that SPL incorporate into its policies and procedures that it identifies its prior to the collection of personal information.

[70] I recommend that SPL implement auditing capabilities for its electronic systems used to manage personal information.

[71] I recommend that SPL create a policy that it will conduct random but regular audits of employees' use of electronic systems to ensure they are only accessing the personal information they require to complete their job duties.

Dated at Regina, in the Province of Saskatchewan, this 4th day of March, 2015.

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