



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **INVESTIGATION REPORT 121-2018, 122-2018**

### **Saskatchewan Legal Aid Commission, Saskatoon Police Service**

**January 17, 2019**

**Summary:** The Commissioner investigated the Saskatoon Police Service's (SPS) long standing practice of sharing the personal information of individual's being held by SPS with Saskatchewan Legal Aid Commission. The Commissioner recommended that if SPS recommenced this practice, it should do so with the consent of the individuals. SPS indicated that it ceased the practice during the course of the investigation.

#### **I BACKGROUND**

- [1] Through a separate privacy breach investigation, my office learned about Saskatoon Police Services' (SPS) practice of sharing cell sheets with the Saskatchewan Legal Aid Commission (Legal Aid) on a daily basis. Cell sheets are a list of individuals who are in police cells. Legal Aid uses the information to contact the individuals on the list to ask if they require its services.
- [2] On July 5, 2018, my office raised our concerns about the practice with both SPS and Legal Aid. My office notified both organizations of our intention to investigate the matter and asked that they review the practice.

## II DISCUSSION OF THE ISSUES

### 1. Does *The Local Authority Freedom of Information and Protection of Privacy Act* apply in these circumstances?

[3] The privacy provisions of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) apply when three elements are present. The first element is personal information, the second element is a local authority, and the third element is if the personal information is in the possession or control of the local authority.

[4] Personal information is defined in subsection 23(1) of LA FOIP. Relevant provisions are 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;

(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;

...

(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.

[5] SPS indicated that the cell sheets contain the following data elements for each individual held in a cell:

- Cell number
- Status
- Name
- Date of Birth
- Sex
- Summary

- Arrest time
- Remarks

[6] In the summary field, the SPS indicates what sections in the *Criminal Code*, *The Alcohol and Gaming Regulations Act, 1997* and/or *The Summary Offence Procedure Act, 1990* are related to the arrest and SPS file number. In the remarks field, SPS uses codes to communicate information such as when the individual will appear in Court or in front of a Justice of the Peace, if an individual is held at the Saskatoon Correctional Centre, or if the individual is not charged with an offence, for example, likely to be released when no longer intoxicated.

[7] The names of the individuals qualify as personal information pursuant to subsection 23(1)(k)(i) and (ii) of LA FOIP. The date of birth and sex qualify as personal information of the individuals pursuant to subsection 23(1)(a) of LA FOIP. The rest of the information qualifies as criminal history of the individuals and therefore, personal information pursuant to subsection 23(1)(b) of LA FOIP.

[8] On January 1, 2018, amendments to LA FOIP came into force. This included the addition of subsection 2(f)(viii.1) of LA FOIP which provides:

2 In this Act:

...

(f) “local authority” means:

...

(viii.1) a police service or regional police service as defined in *The Police Act, 1990*;

[9] SPS is a police service as defined in *The Police Act, 1990*. SPS qualifies as a local authority.

[10] SPS indicated that the cell sheet is generated by SPS’ information management system, called SIMS (Saskatoon Information Management System). As such, the personal information is in the possession and control of SPS.

[11] LA FOIP is engaged. Therefore, I have authority to undertake this investigation.

**2. Does *The Freedom of Information and Protection of Privacy Act* apply in these circumstances?**

[12] The privacy provisions of *The Freedom of Information and Protection of Privacy Act* (FOIP) apply when three elements are present. The first element is personal information, the second element is a government institution, and the third element is if the personal information is in the possession or control of the government institution.

[13] Personal information is defined in subsection 24(1) of FOIP, which is similar to subsection 23(1) of LA FOIP. For the same reasons, the information on the cell sheets qualify as personal information under subsection 23(1) of LA FOIP, it qualifies as personal information under subsection 24(1) of FOIP.

[14] Legal Aid is prescribed as a government institution in *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations) in Part I of the Appendix. As such, it is considered a government institution pursuant to subsection 2(1)(d)(ii) of FOIP.

[15] Legal Aid collects a copy of the cell sheets from SPS and uses it to contact the individuals. At the point it is received by Legal Aid, the copy is then in the possession and control of Legal Aid.

[16] FOIP is engaged. Therefore, I have authority to undertake this investigation.

**3. Did SPS have authority to disclose the personal information to Legal Aid and did Legal Aid have authority to collect the personal information from SPS?**

[17] Legal Aid provides a range of legal services to low income individuals in Saskatchewan in the areas of family and criminal law. SPS reported that whether an individual is held in detention until they appear in Court or they are released on their own recognizance, every person that is arrested has a right to legal counsel.

- [18] SPS indicated that when an individual is arrested they are advised of their rights and provided warnings. As part of this process, the individual is asked if they would like to speak to a lawyer in accordance with section 10 of the *Charter of Rights and Freedoms*. Immediately following the booking/searching process, an arrested individual is provided access to a telephone to call a lawyer. SPS has telephone rooms where individuals are placed to speak in private to legal counsel. The officer stands outside the door and dials the lawyer the arrested individual requested. The individual can request to be connected with a lawyer from Legal Aid or any other lawyer.
- [19] Legal Aid reported that if the arrested individual contacts Legal Aid during the process SPS described, it is known as “duty counsel advice”. This is a short telephone call with a lawyer contracted by Legal Aid. The records from these telephone calls are not collected by Legal Aid, therefore, Legal Aid has not known which arrested individuals call the contracted lawyers.
- [20] Legal Aid advised that, after an individual makes the initial telephone call to the contracted lawyer, Legal Aid contacts everyone on the list who will be appearing before a judge for “duty counsel service”. It uses the cell sheet to do so. It should be noted that Legal Aid does not contact individuals who are being held because they are intoxicated or have not been charged.
- [21] In its submission, Legal Aid submitted that SPS had the authority to disclose the personal information on the cell sheets, without the consent of the subject individuals, to Legal Aid pursuant to subsection 28(2)(s) of LA FOIP and subsection 10(c) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations).
- [22] Subsection 28(2)(s) 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:
- ...
- (s) as prescribed in the regulations.

[23] Subsection 10(c) of the LA FOIP Regulations provides:

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

...

(c) where disclosure may reasonably be expected to assist in the provision of services for the benefit of the individual to whom the information relates;

[24] Legal Aid must also consider its authority to collect the personal information without the consent of the subject individuals in question. Subsection 29(2)(u) of FOIP and subsection 16(c) of the FOIP Regulations are similar to subsection 28(2)(s) of LA FOIP and subsection 10(c) of the LA FOIP Regulations.

[25] In its submission, SPS indicated that it is considering ending the practice of disclosing the personal information of those persons arrested via cell sheet. Both Legal Aid and SPS acknowledged that none of the other police services in the province engage in the same practice of providing cell sheets to Legal Aid.

[26] The provisions cited above allow disclosure when the public body does not have consent to disclose the information in question. However, in this case, there is already an established process whereby the SPS asks each individual if they would like the services of Legal Aid or if they would like services of another lawyer. If SPS has already asked an individual if they would like the services of Legal Aid, and that individual declines, SPS should not disclose that individual's personal information to Legal Aid.

[27] Legal Aid submitted that it does not consider the right to speak to a lawyer under section 10 of the *Charter of Rights and Freedoms*, an indication of their consent or wish for duty counsel service representation. It submitted that one is a right, which is met by a program funded and operated by Legal Aid at arms' length from the staff lawyer model. The other is a service governed by *The Legal Aid Act* and operated by Legal Aid with a staff lawyer model.

[28] Nevertheless, SPS should rely on express consent to disclose personal information to Legal Aid if an individual has already signaled that they have obtained counsel other than Legal Aid.

[29] Further, as Legal Aid does not contact those individuals who are intoxicated or have not been charged, there is no need for SPS to provide Legal Aid with information about these individuals.

[30] On December 21, 2018, the SPS indicated that it has ceased the practice of sending cell sheets to Legal Aid.

### **III FINDING**

[31] I find that SPS did not rely on consent of the subject individuals when disclosing personal information on cell sheets to Legal Aid.

### **IV RECOMMENDATIONS**

[32] If SPS makes the decision to recommence disclosing personal information on cell sheets to Legal Aid, I recommend that SPS only disclose personal information if SPS receives consent to disclose personal information from each subject individual.

[33] I recommend that Legal Aid take no further action.

Dated at Regina, in the Province of Saskatchewan, this 17th day of January, 2019.

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