



INVESTIGATION REPORT 220-2015

Saskatoon Regional Health Authority

April 5, 2016

Summary:

The Commissioner received a complaint from an individual who was not satisfied with the outcome of the investigation conducted by Saskatoon Regional Health Authority (SRHA) into his concern that SRHA inappropriately disclosed his personal information (employment history) when providing an employment reference. Upon investigation, the Commissioner found that SRHA had authority to use and/or disclose the personal information for the purpose of responding to reference checks pursuant to subsections 27(b) and 28(2)(s) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and subsections 10(e) and (g) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations).

I BACKGROUND

- [1] On December 3, 2015, my office received a complaint from an individual asserting that Saskatoon Regional Health Authority (SRHA) shared his personal information from his personnel file with prospective employers without his consent which resulted in him not being hired for positions he had applied for.
- [2] The Complainant had first raised his concerns with SRHA in an email dated September 17, 2015. SRHA had responded November 4, 2015, indicating that SRHA had authority to share his employment history pursuant to a collective agreement between SRHA and the Saskatchewan Union of Nurses (SUN). In addition, SRHA asserted that the Complainant had provided references to the SRHA managers and LutherCare

Communities and the references may have provided the employment history the Complainant was concerned with.

- [3] On December 7, 2015, my office provided notification to SRHA and the Complainant advising that my office would be undertaking an investigation and requested that SRHA provide my office with a copy of its investigation report. The investigation report was received on December 30, 2015. On February 25, 2016, my office requested additional information from SRHA. The additional information was received on March 15, 2016.

II DISCUSSION OF THE ISSUES

- [4] SRHA 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. Subsection 23(1) of LA FOIP provides a number of examples of the types of information that would qualify as personal information. However, this list is non-exhaustive.

- [6] According to the complaint received by my office, the information at issue is details about the Complainant’s past work history within SRHA. 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 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;

[7] Therefore, there is personal information of the Complainant's involved. As such, SRHA is required to comply with the rules around its collection, use and disclosure of it in accordance with Part IV of LA FOIP.

2. Was there "use" of the Complainant's personal information without authority?

[8] *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.

[9] Based on the information we received from the Complainant and SRHA, the Complainant's personal information was shared via reference checks as follows:

- with St. Paul's Hospital (March 2015); and
- with LutherCare Communities Centre (August 28 to September 2, 2015).

[10] SRHA asserted that the sharing of the Complainant's personal information with St. Paul's Hospital and LutherCare Communities Centre was a "use" and not a "disclosure" because the two organizations fall under the umbrella of SRHA as per an agreement that is in place. *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.

[11] SRHA provided my office with a copy of the agreement. It is a shared services agreement whereby SRHA provides Human Resource services (which include Employment and Labor Relations consultation) to their Affiliates. When an SRHA/Affiliate employee applies for a position, their seniority is recognized between all sites – SRHA and their Affiliates. It is common practice for SRHA/Affiliate employees to transfer between sites.

[12] Section 27 of LA FOIP establishes the rules around a local authority's use of personal information as follows:

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).

[13] Section 27 requires SRHA to have the consent of the individual in order to use the individual's personal information. Where consent is required, it must be in writing as per section 11 of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations).

[14] In this case, the Complainant indicated to my office that he had provided both written and verbal consent for the reference checks to occur. Therefore, SRHA would have had authority to provide the personal information pursuant to subsection 27. It should be noted that even if St. Paul's Hospital and LutherCare Communities Centre were found to be external organizations and the sharing of the Complainant's personal information constituting a disclosure rather than a use, SRHA would still have had authority pursuant to subsection 28(1) of LA FOIP because the Complainant provided his consent. Subsection 28(1) of LA FOIP provides that:

28(1) No local authority shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 29.

[15] Despite having consent, SRHA also cited subsection 10(e) of the LA FOIP Regulations as authority for its use (and/or disclosure) of the Complainant's personal information. For subsection 27(b) of LA FOIP to apply, SRHA's use of the Complainant's personal information must have been for a purpose related to a disclosure authorized pursuant to subsection 28(2) of LA FOIP. Subsection 28(2) of LA FOIP outlines numerous provisions whereby a local authority can disclose personal information without the consent of an individual. Subsections 28(2)(s) of LA FOIP and 10(e) of the LA FOIP Regulations provide as follows:

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.

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

...
(e) for the purpose of providing an employment reference with respect to a person who is or was employed by a local authority;

[16] Subsection 10(e) of the LA FOIP Regulations provides the authority to a local authority to disclose personal information, without consent, for the purpose of providing an employment reference. Therefore, as subsection 10(e) of the LA FOIP Regulations applies, subsection 27(b) of LA FOIP would also apply.

[17] Another subsection worth noting here is subsection 10(g) of the LA FOIP Regulations which 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

(ii) the terms or circumstances under which a person ceased to be an employee of a local authority, including the terms of any settlement or award resulting from the termination of employment;

[18] 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. In this circumstance, in order to comply with this principle, SRHA should only use and/or disclose the personal information that is reasonably related to the job requirements. Examples of personal information that could be considered not reasonably related to job requirements could be the sexual orientation of an individual or the number of children they had.

[19] SRHA provided some details of the information requested and shared in the reference checks. They provided some original notes from the reference checks that were completed. Based on what has been provided to my office, it appears that the information requested and provided was reasonably related to the job requirements. Therefore, it appears the principle of data minimization was followed by SRHA.

[20] In conclusion, SRHA had authority to use (and/or disclose) the personal information of the Complainant related to his previous employment with SRHA. As there was authority, a privacy breach has not occurred.

III FINDING

[21] I find that SRHA had authority to use and/or disclose the personal information of the Complainant for the purpose of responding to reference checks.

IV RECOMMENDATION

[22] There are no recommendations to be made at this time as I have found that there has been no privacy breach under LA FOIP.

Dated at Regina, in the Province of Saskatchewan, this 5th day of April, 2016.

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