



Office of the
Saskatchewan Information
and Privacy Commissioner

November 29, 2022

OPEN LETTER

Honourable Gene Makowsky
Ministry of Social Services
Room 303, Legislative Building,
2405 Legislative Drive,
Regina, SK, Canada, S4S 0B3

ss.minister@gov.sk.ca

Dear Hon. Gene Makowsky:

Re: Bill 101 An Act to amend *The Child and Family Services Act* and to make a consequential amendment to *The Freedom of Information and Protection of Privacy Act*

I note you have tabled Bill 101 in the Legislative Assembly on November 14, 2022. Your ministry did not consult me on this Bill, so I would like to provide you with some comments regarding a citizen's rights to information under sections 74 and 74.1.

As you know, in any consultation, I would have suggested that my office be given oversight of access and privacy issues related to section 74. I regret there was no opportunity to discuss this. I believe oversight could be provided in a similar way as is done in Alberta, Ontario, Nova Scotia and British Columbia.

In any event, section 33 of *The Freedom of Information and Protection of Privacy Act* (FOIP) provides:

33 The commissioner may:

(a) offer comment on the implications for privacy protection of proposed legislative schemes or government programs;

This section allows me to comment on proposed legislation. The balance of this letter will focus on the proposed provisions in Bill 101.

Subsection 74(1) provides:

74(1) Notwithstanding *The Freedom of Information and Protection of Privacy Act* and *The Health Information Protection Act*, the use of, disclosure of and access to information in records pertaining to information mentioned in subsection (2) obtained pursuant to this Act is to be governed by this Act.

Currently subsection 23(3) of FOIP provides an override for section 74 of *The Child and Family Services Act* (CFSA). I have acknowledged this in a number of my reports, the last being [Review Report 269-2021](#). Although I have lobbied for change, I have always acknowledged that this override exists. The addition of the new subsection 74(1) appears to remove rights that citizens would have had under FOIP. I believe this provision was not necessary and it is unclear as to its effect on citizens. I would request that you consider removing the new subsection 74(1).

Subsection 74(4) provides:

(4) Subject to subsection (6) and the regulations, the minister, a director or an officer may disclose or communicate information mentioned in subsection (2) to all or any of the following:

(a) the guardian, parent, care provider or foster parent of a child;

(b) Indigenous governing bodies, for the following purposes:

(i) in cases of significant measures being taken with a child;

(ii) with respect to information about the child's parents, siblings, extended family members, care providers, and affiliation with an Indigenous community or Métis authority;

(c) bands receiving child and family services directly from the ministry;

(d) First Nations Child and Family Services Agencies, including materials filed with the court;

(e) Indigenous, provincial, and federal entities, as the case may be, for the purposes of advancing registration and membership of Indigenous children.

I note the minister, the director or an officer “may” disclose information to the persons listed. If a guardian makes a request for information, and the request is refused, is there an internal process where the guardian could request a review of the decision? I would suggest you consider a provision such as:

74(13) If a director or an officer makes a decision after a request for information, that person or organization can appeal to the minister for re-consideration of the decision.

Having a review of the decision is similar to what you have proposed in Bill 103, *The Accessible Saskatchewan Act*. I note in subsection 6-10 an order by an inspector can be appealed to the Director. I note the Director is required to issue the decision within 60 days with reasons.

I also note section 10 of *The Social Services Administration Act* provides:

10(1) The minister may establish appeal committees that shall review or hear any

grievances, arising out of the administration of this Act or any other Act administered by the ministry, that are submitted by persons who feel that they are aggrieved by a decision, act or omission of an official or representative of the ministry.

...

These are examples where the Legislature can expect that there will be a review process for decisions made under a statute.

I also note that subsection 74(4) has no timeline. The director or an officer could in theory answer the request for information a year later. I would suggest you consider a provision such as the following:

74(14) The minister, director or an officer shall respond to a request for information within 30 days of receiving the request.

I also note the subsection refers to “may” which means the minister, director or an officer may refuse to provide information, when requested. Administrative best practice suggests that a person be given reasons for a decision. Thus, I would suggest you consider the following subsection:

74(15) If the minister, director or an officer decides to refuse to provide information requested, the minister, director or an officer shall, within 30 days of the decision, provide reasons for the refusal.

I further note that there are no parameters regarding the reasons that might justify refusal to provide information. I note that subsection 74.1(5) gives reasons why the minister might refuse to provide information. I do not know whether that subsection will apply to requests under section 74. To be clear, I would suggest you consider the following provision:

74(16) The minister, director or an officer when deciding to provide information may only refuse for the same reasons as set out in subsection 74.1(5).

I also note in *The Accessible Saskatchewan Act*, subsection 6-10(4) requires the director to make a decision within 60 days and to give reasons.

Subsection 74(5) provides:

(5) The minister, a director or an officer may, in accordance with the regulations, disclose or communicate information mentioned in subsection (2) relating to a deceased individual if the disclosure or communication:

(a) is being made to the personal representative of the deceased individual for a purpose related to the administration of the deceased individual’s estate;

(b) is to the individuals prescribed in the regulations and is limited to the deceased individual’s information; or

(c) is necessary to administer this Act or the regulations.

I note the same issues raised above, if information is requested but refused, can the person appeal to the minister for re-consideration of the decision? Should the person receive a response within 30 days and should reason for a refusal be given? Thus, I would request you consider the addition of proposed subsections (13), (14), (15) and (16) to address these concerns.

Subsection 74(7) provides:

(7) Any information that may be disclosed to the person to whom it relates may, with the written consent of the person to whom it relates, be disclosed to any other person.

If a person consents to the provision of information, the information may be disclosed to another person. I note it does not say “the minister, director or an officer may disclose...”. The question then is, who is authorized to disclose or not disclose and who is obligated to communicate with the person making the request? I would suggest you consider adding a reference to the minister, director or an officer. In a similar way, as raised above, if the request is denied, will there be an internal appeal mechanism wherein the person requesting may have a re-consideration of their request? Thus, I would request you consider the addition of proposed subsections (13), (14), (15) and (16).

Subsection 74(12) provides:

(12) The minister may, in accordance with the regulations, exchange information with a person or entity prescribed in the regulations for the purposes of a program or activity designed to benefit the health, safety, welfare or social well-being of an individual if that exchange is consistent with the purposes of this Act.

The minister may exchange information without consent for the purposes outlined in the subsection. If a person finds out that information was disclosed and objects to that disclosure, does the person have a right to an investigation to determine if the information was properly disclosed in accordance with this subsection? Would there be an internal review process to determine whether a breach of privacy had occurred? I believe a person who feels their personal information or personal health information has been improperly disclosed should have an opportunity to have someone consider the person’s concern. I would suggest you consider a subsection as follows:

74(17) If a person considers their information has been improperly disclosed, under subsection (12), the person may request the minister consider the disclosure and the minister may direct the ministry to request return of the information or cease providing the information in the future.

The proposed subsection (17) would be important anytime the minister releases information under section 74 or section 74.1. A citizen may have a concern that too much information was

released or information was accidentally released and that citizen should have an opportunity to have the ministry review excessive application of section 74 or 74.1.

Subsection 74.1(1) provides:

(1) Subject to subsections (4) to (6) and the regulations, an individual has the right to obtain access to information about the individual that is contained in a record in accordance with this Act that is in the custody or control of the ministry.

Giving a person the right to information about himself or herself is a good provision. If a person makes a request, how long does the minister have to provide the information? If the minister refuses to provide the information, does the minister have to give reasons why and within a certain time period? If there is a decision to refuse to give information, will there be an appeal mechanism? I would ask you consider the addition of subsections (13), (14) and (15), as proposed above in section 74.1.

Subsection 74.1(5) provides:

(5) Subject to subsection (6) and the regulations, the minister may refuse to grant an individual access to the individual's record if:

- (a) in the opinion of the minister, knowledge of the information could reasonably be expected to endanger the mental or physical health or the safety of the individual or another person;
- (b) disclosure of the information would reveal confidential information about another person who has not expressly consented to the disclosure;
- (c) disclosure of the information could reasonably be expected to identify a third party who provided the information in confidence under circumstances in which confidentiality was reasonably expected; or
- (d) the information was collected principally in anticipation of, or for use in, a civil, criminal or quasi-judicial proceeding.

As mentioned above, if the minister refuses to provide the information, does the minister have to give reasons within a specified time period? I would request that you consider the addition of subsections in 74.1 similar to what was proposed in subsections (13), (14), and (15). .

I understand that there may be regulations related to these new sections. I also assume there would be policies and procedures. I believe citizens need to know how their request for information will be handled, and what procedures and criteria will be applied. I would suggest you consider a section as follows:

74.2 The minister shall publish on the ministries' website any policies or procedures made in relation to sections 74 or 74.1 and any regulations made under those sections.

I would be pleased to discuss this matter with you, please call me at (306) 537-4287.

Yours truly,



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

cc. DM of Social Services, Kimberly Kratzig, kimberly.kratzig@gov.sk.ca