



Office of the  
Saskatchewan Information  
and Privacy Commissioner

September 29, 2022

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

[ss.minister@gov.sk.ca](mailto:ss.minister@gov.sk.ca)

Dear Hon. Makowsky:

**Re: Can't Do my Job if I Don't Get the Record**

I have been informed by your ministry that a review of section 74 of [The Child and Family Services Act](#) (CFSA) is underway. I would like to provide you with options for your consideration regarding that section and related regulations.

There is an issue with the interaction of section 23 of [The Freedom of Information and Protection of Privacy Act](#) (FOIP) and section 74 of the CFSA, which I have dealt with in many reports such as [Review Report 269-2021](#), [Review Report 254-2017](#), [Review Report 150-2018](#), [Review Report 054-2020](#) and [Review Report 145-2020](#).

I will **not** deal with that issue at this time but will request the Ministry of Justice to make an amendment to FOIP.

In this letter, I will address an issue that is clearly caused by one interpretation of section 74 of the CFSA.

Before addressing section 74, I need to indicate what my office does. Under FOIP, citizens are entitled to request records from ministries. They are entitled to records, but there are many exceptions to the rule. The head of a ministry must decide as to whether any of those exemptions apply and must communicate that decision to the applicant. If the applicant does not like the head's answer, they can request a review by my office. In doing a review, my office requests the records in question and provides recommendations as to whether records should be released or withheld. **My office never releases the record. I make recommendations that the head should release the record or not.** The head of the ministry then has the decision of accepting my recommendations or disagreeing with the recommendation. My website has over 800 reports indicating the types of recommendations made.

My office is an independent office established by the Legislative Assembly and as such is referred to as an oversight body. To do my job, it is critical that my office be able to receive the record and review it to determine whether the decision of the head was appropriate. Your ministry has taken the position, over and over, that it will not release the record to me because of section 74. That has made it impossible for my office to do its job properly.

Section 74 has a broad statement on confidentiality, but it also contains exceptions. For example, subsection 74(5) provides that a person can consent to a release of their information to another person. Subsection 74(5.01) allows the minister, director, or an officer to provide information without consent in accordance with the regulations. Subsection 74(5.1) allows the minister to release information where the benefits would outweigh the invasion of privacy.

I am asking that you consider an amendment to section 74, which would require your ministry to provide me with records when doing a review of an access request. I would request you consider wording such as:

74(7) The minister, the director or an officer shall release information and records to the Information and Privacy Commissioner when performing duties or exercising powers under *The Freedom of Information and Protection of Privacy Act*.

Section 17.1 of [The Child and Family Services Regulations](#) allows for the providing of information to a medical professional, a police service, the RCMP, a trustee as defined in [The Health Information Protection Act](#), a First Nation, the public guardian and trustee and a lawyer in a protection hearing. This regulation allows the provision of information to numerous organizations. As an alternative to an amendment to the Act, I would propose an amendment to section 17.1 as follows:

17.1(d) required by the information and privacy commissioner exercising duties under *The Freedom of Information and Protection of Privacy Act*.

**Again, I emphasize, my office never releases records to the public.** It requires records to do its review and make recommendations whether to release or not.

I should point out that the Advocate for Children and Youth has this oversight power in section 26 of [The Advocate for Children and Youth Act](#). The Ombudsman has similar powers under sections 24 and 25 of [The Ombudsman Act](#). The Provincial Auditor has similar powers under section 24 of [The Provincial Auditor Act](#). It is necessary that oversight bodies have the ability to do the work assigned to them by the Legislative Assembly.

I hope you would consider my request, and I would request a meeting with you to discuss the matter further. My office will be contacting you to set up that meeting.

Yours truly,



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

cc. Minister of Justice and Attorney General, Hon. Bronwyn Eyre, [jus.minister@gov.sk.ca](mailto:jus.minister@gov.sk.ca)  
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