



Office of the
Saskatchewan Information
and Privacy Commissioner

APPLICATION TO DISREGARD AN ACCESS TO INFORMATION REQUEST DECISION 165-2020

Saskatchewan Government Insurance

August 13, 2020

Summary: Saskatchewan Government Insurance (SGI) applied to the Commissioner for authorization to disregard the Applicant's access to information request under subsection 45.1(1) of *The Freedom of Information and Protection of Privacy Act*. The Commissioner found that the Applicant's access to information request was repetitious, systematic and an abuse of the right of access. As such, the Commissioner authorized SGI to disregard the access to information request.

I BACKGROUND

[1] On July 9, 2020, Saskatchewan Government Insurance (SGI) received the following access to information request from the Applicant:

as previously requested June 10, 2020 but with one word spelled different I want to know if any of my personal information is on [SGI employee name removed] personnel file or similar file after he ignored my injuries for 27 days by being too lazy at best and outright malicious at worst to send a 1 sentence email to the injury department for 27 days and I complained to the Fair Practices Office and Senior Management about his neglect and negligence. The answer would come from the HR department not some adjuster.

[2] SGI did not respond to the Applicant's request. Instead, on July 21, 2020, it made an application to my office seeking authority under section 45.1 of *The Freedom of Information and Protection of Privacy Act* (FOIP) to disregard the request on the grounds

that the request amounted to an abuse of the right of access owing to its repetitious and systematic nature. In addition, on the grounds that the request was frivolous, vexatious, not in good faith and concerned a trivial matter. Subsection 45.1(3) of FOIP suspends the time for responding to a request where the government institution involved has sought relief under section 45.1 of FOIP.

[3] On July 21, 2020, my office advised SGI that it could not proceed with the application, as it did not include all of what my office required. On July 22, 2020, my office received additional materials from SGI and was able to proceed.

[4] On July 22, 2020, my office provided notification to SGI and the Applicant that I would be considering the application to disregard the access to information request.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[5] SGI is a “government institution” pursuant to subsection 2(1)(d)(ii) of FOIP. Thus, I have jurisdiction to consider this application to disregard.

2. Should SGI’s application pursuant to subsections 45.1(2)(b) and (c) of FOIP be granted?

[6] Section 45.1 of FOIP provides government institutions the ability to apply to the Commissioner requesting to disregard an access to information request or a correction request. Section 45.1 of FOIP provides as follows:

45.1(1) The head may apply to the commissioner to disregard one or more applications pursuant to section 6 or requests pursuant to section 32.

(2) In determining whether to grant an application or request mentioned in subsection (1), the commissioner shall consider whether the application or request:

(a) would unreasonably interfere with the operations of the government institution because of the repetitious or systematic nature of the application or request;

(b) would amount to an abuse of the right of access or right of correction because of the repetitious or systematic nature of the application or request; or

(c) is frivolous or vexatious, not in good faith or concerns a trivial matter.

(3) The application pursuant to subsection 6(1) or the request pursuant to clause 32(1)(a) is suspended until the commissioner notifies the head of the commissioner's decision with respect to an application or request mentioned in subsection (1).

(4) If the commissioner grants an application or request mentioned in subsection (1), the application pursuant to subsection 6(1) or the request pursuant to clause 32(1)(a) is deemed to not have been made.

(5) If the commissioner refuses an application or request mentioned in subsection (1), the 30-day period mentioned in subsection 7(2) or subsection 32(2) resumes.

[7] An application to disregard is a serious matter as it could have the effect of removing an applicant's express right to seek access to information. However, FOIP recognizes that not all access to information requests are appropriate. Section 45.1 of FOIP exists to preserve the proper intent and functioning of the Act. Former British Columbia Information and Privacy Commissioner (BC IPC), David Loukidelis, said the following about the role of the equivalent provision in British Columbia's Act:

...Access to information legislation confers on individuals such as the respondent a significant statutory right, *i.e.*, the right of access to information (including one's own personal information). All rights come with responsibilities. The right of access should only be used in good faith. It must not be abused. By overburdening a public body, misuse by one person of the right of access can threaten or diminish a legitimate exercise of that same right by others, including as regards their own personal information. Such abuse also harms the public interest, since it unnecessarily adds to public bodies' costs of complying with the Act. Section 43 exists, of course, to guard against abuse of the right of access...

(BC IPC Order 99-01 at p. 7)

[8] In its application to my office, SGI submits that the access to information request of July 9, 2020, should be disregarded pursuant to subsection 45.1(2)(b) and (c) of FOIP.

[9] I will begin by considering subsection 45.1(2)(b) of FOIP. In order for subsection 45.1(2)(b) of FOIP to apply, the access to information request must be of such a repetitious or systematic nature that it can be said to be an abuse of the right of access. Both parts of the following test are considered:

1. Are the requests for access repetitious or systematic?
2. Do the repetitious or systematic requests amount to an abuse of the right of access?

[10] I will consider each of these questions.

1. Are the requests for access repetitious or systematic?

[11] *Repetitious* requests are requests that are made two or more times (BC IPC Order F10-01 at paragraph [16]).

[12] *Systematic* requests are requests made according to a method or plan of acting that is organized and carried out according to a set of rules or principles (BC IPC Order F13-18 at paragraph [23]).

[13] Factors that can be considered when determining if requests are repetitious or systematic are as follows:

- Does the applicant ask more than once for the same records or information?
- Are the requests similar in nature or do they stand alone as being different?
- Do previous requests overlap to some extent?
- Are the requests close in their filing time?
- Does the applicant continue to engage in a determined effort to request the same information (an important factor in finding whether requests are systematic, is to determine whether they are repetitious)?
- Is there a pattern of conduct on the part of the applicant in making the repeated requests that is regular or deliberate?

- Does the applicant methodically request records or information in many areas of interest over extended time periods, rather than focusing on accessing specific records or information of identified events or matters?
- Has the applicant requested records or information of various aspects of the same issue?
- Has the applicant made a number of requests related to matters referred to in records already received?
- Does the applicant follow up on responses received by making further requests?
- Does the applicant question the content of records received by making further access requests?
- Does the applicant question whether records or information exist when told they do not?
- Can the requests be seen as a continuum of previous requests rather than in isolation?

(New Brunswick Information Privacy Commissioner Interpretation Bulletin,
Section 15 – Permission to disregard access request)

[14] In its application to my office, SGI asserted that the access to information request was the same as a previous request SGI received from the Applicant on June 11, 2020. In addition, it asserted that all of the requests submitted by the Applicant since May 22, 2019, were part of a pattern of behavior that was systematic and repetitious.

[15] The request received by SGI on June 11, 2020, stated the following:

I want to know if any of my personal information is on [SGI employee name removed] personal file or similar file after he ignored my injuries for 27 days by being too lazy at best and outright malicious at worst to send a 1 sentence email to the injury department for 27 days and I complained to the Fair Practices Office and Senior Management about his neglect and negligence.

May 14, 2019 to present

[16] The request received by SGI on July 9, 2020, stated the following:

as previously requested June 10, 2020 but with one word spelled different I want to know if any of my personal information is on [SGI employee name removed] personnel file or similar file after he ignored my injuries for 27 days by being too lazy at best and outright malicious at worst to send a 1 sentence email to the injury department for 27 days and I complained to the Fair Practices Office and Senior Management about his neglect and negligence. The answer would come from the HR department not some adjuster.

May 14, 2019 to present

- [17] SGI provided the Applicant with a response to the June 11, 2020 request. It indicated that it did not have a “personal” file relating to the Applicant and the SGI employee was no longer employed by SGI. Following receipt of SGI’s response, the Applicant exchanged a series of emails with SGI to clarify what was being sought. SGI suggested the Applicant submit a new request. The Applicant proceeded to submit a new request asking for information from the “personnel” file rather than the “personal” file of the SGI employee.
- [18] Although the request of July 9, 2020, is worded almost identical as the request of June 11, 2020, the Applicant was following the guidance of SGI. The Applicant fixed one word on the original request and re-submitted it. It is possible to have a repetitious request without there being an abuse of the right of access. For example, applicants are not always sure how to word their access to information request and may submit additional requests in an effort to pinpoint the specific records they are seeking. Such a situation would be better handled through the duty to assist and clarification with an applicant. SGI met its duty to assist by responding to the Applicant’s emails and attempts to clarify what was being sought which led to the submitting of the amended request of July 9, 2020.
- [19] Although there appears to be a good explanation for the Applicant sending the repetitious request, SGI asserted that the overall pattern of access requests needed to be considered. SGI indicated that between May 22, 2019 and July 21, 2020, it had received 32 access to information requests from the Applicant. It provided my office with a historical breakdown of the requests, responses and communications with the Applicant. The following is a summary of SGI’s assertions:

- The 32 requests are similar in nature focused on records related to a specific event. The Applicant had a motor vehicle collision and disagreed with SGI's findings on who was responsible for the collision, how much the Applicant's vehicle was valued at and how long it took SGI to refer the Applicant's claim to an injury adjuster.
- The Applicant asks more than once for the same records. The Applicant made previous requests where some of the responsive records overlapped with earlier requests. SGI identified seven separate requests where the records had already been provided. For example, in terms of volume and significance, 535 pages of requested records had already been provided by earlier requests.
- Many requests were either submitted on the same day or within a very short time period. 22 requests were submitted over four months (July and October 2019). On seven occasions, two or more requests were received on the same day:
 - July 2, 2019 – two requests submitted;
 - July 19, 2019 – two requests submitted;
 - July 29, 2019 – two requests submitted;
 - August 12, 2019 – three requests submitted;
 - September 17, 2019 – two requests submitted;
 - October 3, 2019 – two requests submitted; and
 - October 4, 2019 – three requests submitted.
- In addition, in four of the above seven cases, the Applicant submitted repeated requests while similar earlier requests were still being processed.
- The Applicant questioned the content of the records received by sending follow-up emails and making further requests.
- Many of the email communications contain derogatory and offensive language and unfounded allegations. For example, calling an SGI adjuster "lazy", a supervisor "useless", claiming SGI "covered it up" or "swept under the rug" whether an employee was disciplined, claiming SGI was "lying online" and "fraudulently reporting" and that another employee "deliberately lied and perjured himself".

[20] In response to SGI's assertions, the Applicant made a number of arguments to my office which can be summarized as follows:

- The Applicant was forced to make formal access to information requests because SGI was not providing the information she requested through informal routes and was not doing its job;

- The Applicant listed a number of instances where, she asserts, SGI was not handling her claim properly which forced her to seek more information such as:
 - SGI giving false statements to the Highway Traffic Board and she had to defend herself against the false claims; and
 - Delays in reporting her injury claim because an adjuster did not do the job properly.
- The Applicant asserted that as a result of the access to information requests she was able to get an 83% increase on the valuation of her vehicle. She asserted that this was only possible because of her access to information requests focused on how the initial valuation decision was made;
- The Applicant denies there were 535 pages of records that were repetitive and asserted that SGI did not respond to her request of January 15, 2020; and
- The Applicant asserted that SGI knows that she has a traumatic brain injury so the allegations of her requests being systematic and planned are nonsense. Finally, she asserted she is “just a confused customer being constantly misled.”

[21] As the Applicant denied there were 535 pages of records that were repetitive and that SGI did not respond to her request of January 15, 2020, I checked the submission provided by SGI. Contained in the package was a copy of a letter to the Applicant dated February 13, 2020. The letter indicated it was a response to the Applicant’s January 15, 2020, access to information request. Further, the letter stated:

Prior to October 1, 2019, you submitted 19 requests for information to our office. As of October 1, 2019, we had responded to 16 of those requests. The responses provided you with approximately 535 pages of records from your file, the third party’s file and various other documents...

As such, these documents have been previously provided to you. If you are seeking another copy of any previously provided documents, there will be a charge as per *The Freedom of Information and Protection of Privacy Regulations*.

[22] I have considered all of the materials before me. It appears the Applicant continues to engage in a determined effort to request information related to the decisions made by SGI and its handling of the claim. Although not all the requests are worded the same, the Applicant continues to request records or information of various aspects of the same issue.

That being, the motor vehicle accident and actions or decisions made by SGI. There appears to be a battle playing out through the access to information process and even when provided with records, more requests are submitted. If the Applicant does not get what is requested, either because exemptions are applied by SGI or the records are found to not exist, the Applicant follows up with emails expressing frustration, questioning how SGI handled the request and then submits additional requests. The request of July 9, 2020, can be seen as a continuum of previous requests rather than in isolation.

[23] It should be noted that after receiving a response from SGI to the June 11, 2020 request, the Applicant sent the following email to SGI. It appears the focus of this request is again on the issue of how long it took SGI to refer the Applicant's claim to an injury adjuster:

Your response to SGI-20-P-60 doesnt [sic] even make sense. I asked you if there was record of [SGI employee] ignoring my injuries for 27 days on his personal file at SGI because I want to know if you actually disciplined him or covered it up and swept under the rug most likely and you send me a response you dont [sic] have personal files on customers and you asked the latest adjuster...you should be asking the HR department! Or how to [sic] I ask HR myself? Do I have to file a new request since this one is bungled? How did you hire someone and not have a file with info on him? How did you do payroll and know nothing and have no files?

[24] Repetition is the act of repeating an act or thing. To 'repeat' an act or thing, in turn, is to do the act or thing over again one or more times. Requests which repeat a previous request to which SGI has already responded are obviously repetitious. However, requests that are considered sufficiently connected can also be found to be repetitious (BC IPC Decision F05-01 at [17]). In this case, all of the requests relate to the motor vehicle accident and related disputes that followed.

[25] In conclusion, I find that the July 9, 2020, access to information request meets the standard of "repetitious" and "systematic" as required by subsection 45.1(2)(b) of FOIP. This is based on the following factors:

- The requests are systematic because the Applicant is clearly following a method of making a series of requests within a short time frame for records about the same event or disputed issues.

- I also consider that the frequency and volume of the requests reveals a method of barraging SGI with access requests on particular topics of dispute. In this case, on one of three issues of contention for the Applicant – either SGI’s findings on who was responsible for the collision, how much the Applicant’s vehicle was valued at and how long it took SGI to refer the Applicant’s claim to an injury adjuster. Although the requests have slowed down since May 2019, they still continue.
- For the June 11, 2020 and July 9, 2020 requests, the Applicant is not seeking her own personal information despite asking for such. Rather, she is using the access to information process to find out if the SGI adjuster was disciplined. In general, this behavior is not an issue. Applicants often use the access to information process to find answers to broader questions. However, when considered in conjunction with other actions of the Applicant in this case, this suggests the motive with the request was not to gain access to the records sought but for another purpose.
- The Applicant reviews the records or communications received from SGI, identifies further issues, and makes additional requests. This has been a pattern since May 2019.
- The Applicant has asserted that if SGI had done its job right she would not have to make requests. However, even when provided answers, such as an apology and acknowledgement that the adjuster should have referred the Applicant’s claim to an injury adjuster sooner, requests still continue and evolve to new issues such as wanting to know if the adjuster was disciplined.
- The Applicant continues to submit requests to SGI suggesting the Applicant does not intend to stop the flow of requests and questions, all of which relate to essentially the same records, communications, people and events.

2. Do the repetitious or systematic requests amount to an abuse of the right of access?

[26] An *abuse of the right of access* is where an applicant is using the access provisions of FOIP in a way that is contrary to its principles and objects.

[27] Once it is determined that the requests are repetitious or systematic, one must consider whether there is a pattern or type of conduct that amounts to an abuse of the right of access or are made for a purpose other than to obtain access to information.

[28] Factors that can be considered when determining if requests are an abuse of the right of access are as follows:

- *Number of requests:* is the number excessive by reasonable standards?
- *Nature and scope of the requests:* are they excessively broad and varied in scope or unusually detailed? Are they identical to or similar to previous requests?
- *Purpose of the requests:* are the requests intended to accomplish some objective other than to gain access? For example, are they made for “nuisance” value, or is the applicant’s aim to harass the government institution or to break or burden the system?
- *Timing of the requests:* is the timing of the requests connected to the occurrence of some other related event, such as a court or tribunal proceeding?
- *Wording of the request:* are the requests or subsequent communications in their nature offensive, vulgar, derogatory or contain unfounded allegations?

(Ontario Information and Privacy Commissioner Order MO-3108 at [24], Alberta Information and Privacy Commissioner Order F2015-16 at [39] and [54])

[29] Depending on the nature of the case, one factor alone or multiple factors in concert with each other can lead to a finding that an applicant’s requests are an abuse of the right of access.

[30] The nature and scope of requests can be relevant where they are found to be similar, unusually detailed or indicate an applicant wishes to revisit an issue over and over again that has already been addressed. I have already found that the requests were repetitious and systematic. It also appears the Applicant wishes to revisit the same three issues repeatedly. While I can appreciate the Applicant’s frustration with SGI, FOIP must not be used as a weapon for disgruntled individuals to use against a government institution for reasons that have nothing to do with the Act (BC IPC Order 110-1996 at p. 6). If the Applicant is not happy with decisions made by SGI, there are other appeal processes intended for that purpose.

[31] The purpose of some of the requests appears to be to accomplish an objective other than to gain access. For example, the objective of the July 9, 2020, request was to find out if the SGI adjuster was disciplined, not to gain access to the Applicant's own personal information which was requested. It also appears the purpose is to harass SGI and to expose some perceived "corruption" because the Applicant is dissatisfied with SGI's actions and decisions.

[32] The wording of some of the Applicant's requests and follow-up emails are offensive and contain unfounded allegations. Offensive or intimidating conduct or comments by applicants is unwarranted and harmful. They can also suggest that an applicant's objectives are not legitimately about access to records. Requiring employees to be subjected to and to respond to offensive, intimidating, threatening, insulting conduct or comments can have a detrimental effect on well-being.

[33] Based on the above, I find that the requests are part of a pattern of conduct that amounts to an abuse of the right of access.

[34] As both parts of the test have been met, I am satisfied that the requirements for subsection 45.1(2)(b) of FOIP have been met. Given this finding, it is unnecessary for me to consider subsection 45.1(2)(c) of FOIP.

III DECISION

[35] I grant SGI's application to disregard the Applicant's access to information request made by the Applicant on July 9, 2020.

Dated at Regina, in the Province of Saskatchewan, this 13th day of August, 2020.

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