



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **INVESTIGATION REPORT 096-2018**

### **Saskatchewan Government Insurance**

**May 13, 2019**

#### **Summary:**

The Commissioner undertook a breach of privacy investigation pursuant to subsection 33(d) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to determine if Saskatchewan Government Insurance (SGI) inappropriately released the full name and mailing address of an individual (Individual 2) to another individual (Individual 1) who were involved in a motor vehicle accident with one another. The Commissioner found that the fact that Individual 2 was in an accident to be personal information. The Commissioner also found SGI had the authority to disclose Individual 2's name and address to Individual 1 pursuant to subsection 16(f) of the FOIP Regulations and recommended SGI take no further action on this file.

#### **I BACKGROUND**

[1] On May 29, 2018, an individual (Individual 1) provided my office with an email that could be evidence of an alleged breach of privacy of another individual (Individual 2) involving Saskatchewan Government Insurance (SGI). In the email of March 28, 2018, an Adjuster with SGI provided Individual 1 with the full name and mailing address of Individual 2. Individual 1 and Individual 2 were involved in a motor vehicle accident (accident) with one another, and were going through the insurance claim process with SGI.

[2] By email dated May 30, 2018, my office notified SGI of our intention to undertake a privacy breach investigation pursuant to *The Freedom of Information and Protection of Privacy Act* (FOIP) and requested the following from SGI:

- details regarding this matter,
- which section of FOIP SGI relied on for the disclosure of the information in question,
- details regarding how SGI took into consideration the ‘data minimization’ and the ‘need-to-know’ principles when the information in question was disclosed,
- copies of relevant policies and/or procedures and/or agreements (or plans to develop relevant policies and/or procedures and/or agreements or any other relevant documentation, and
- a copy of SGI’s internal investigation report.

## II DISCUSSION OF THE ISSUES

### 1. Do I have jurisdiction to investigate this matter?

[3] SGI qualifies as a government institution pursuant to subsection 2(d)(ii) of FOIP. Further, subsection 33(d) of FOIP provides my office with the ability to carry out an investigation with respect to personal information in the possession or under the control of government institutions. Subsection 33(d) of FOIP provides:

**33** The commissioner may:

...

(d) from time to time, carry out investigations with respect to personal information in the possession or under the control of government institutions to ensure compliance with this part.

[4] Thus, I have authority to investigate this matter.

### 2. Is there personal information involved in this case?

[5] In the email provided to my office, the full name and address of Individual 2 was provided to Individual 1 by the Adjustor. The email correspondence between the

Adjustor and Individual 1 was related to an accident between Individual 1 and Individual 2 and the current insurance claim of Individual 1.

[6] Subsection 29(1) of FOIP outlines the protection of personal information requirements under FOIP. Subsection 29(1) of FOIP provides:

**29(1)** No government institution 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 related except in accordance with this section or section 30.

[7] Subsection 24(1) of FOIP outlines the type of information that is considered personal information, however it is not an exhaustive list. To assess if information is personal information under FOIP, two elements must exist:

1. There must be an identifiable individual; and
2. The information must be personal in nature.

[8] I will now assess if personal information exists in this case.

*1. Is there an identifiable individual?*

[9] When determining if there is an *identifiable individual* it must be reasonable to expect that an individual may be identified if the information were disclosed. The information must reasonably be capable of identifying particular individuals because it either directly identifies a person or enables an accurate inference to be made as to their identity when combined with other available sources of information or due to the context of the information in the record.

[10] There is an identifiable individual in this case, as the information that has been disclosed includes the name and address of Individual 2. Therefore, the first part of the test has been met.

2. *Is the information personal in nature?*

[11] Before looking at whether or not this information is personal in nature, I must first look at the context in which it was provided to Individual 1.

[12] It is clear that Individual 1 and Individual 2 were in an accident with one another, and in this case, the email chains provided to my office indicate that Individual 1 was going through the insurance claim process with SGI.

[13] Subsection 24(1) provides the definition of personal information under FOIP. Subsection 24(2) of FOIP lists the type of information that is excluded as being personal information for the purposes of FOIP. Subsection 24(2)(e) of FOIP provides:

**24(2) “Personal information”** does not include information that discloses:

...

(e) details of a licence, permit or other similar discretionary benefit granted to an individual by a government institution;

[14] A driver’s licence is issued by SGI, a government institution. The details on the driver’s licence include:

- customer number;
- customer name;
- mailing address;
- date of birth;
- date of licence issued;
- date of licence expiry;
- eye color;
- sex;
- height;
- signature of driver; and
- validation number.

[15] This information, as it appears on the SGI issued driver’s licence is not considered personal information under FOIP as it qualifies as “the details of a licence...granted to an individual by a government institution.”

[16] However, the fact that Individual 2 was in an accident would not be included as information that would qualify as details of a licence as outlined in list in subsection 24(2)(e) of FOIP.

[17] As noted above, subsection 24(1) of FOIP provides examples of types of information that could be considered personal in nature. Although a driver's accident history is not included in the list of examples, a comparison would be provided for in subsection 24(1)(b) of FOIP. Further, subsection 24(1)(k) of FOIP could also apply in this circumstance. Subsections 24(1)(b) and (k) of FOIP provide:

24(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 an 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.

[18] The fact an individual was in an accident, connected with their name and address, is personal in nature.

[19] Therefore, I find the fact that Individual 2 was in an accident to be personal information.

### **3. Did SGI have the authority to disclose personal information under FOIP?**

[20] In this case, SGI provided the name and address of Individual 2 to Individual 1 which were the two parties involved in the accident in question.

[21] In its submission, SGI outlined that drivers in Saskatchewan require a licence and, subject to limited exceptions, all vehicles operating on Saskatchewan roadways require registration and mandatory licence plate insurance. SGI further noted that driving and vehicle ownership is a heavily regulated activity. Division 7 of *The Traffic Safety Act* (TSA) sets out the driver's obligations in the event of an accident and sets out what information is to be exchanged at the roadside between drivers if an accident occurs. This includes their name, address, driver licence number, registration number and insurance details. Subsection 253(2) of the TSA provides:

**253(2)** Every person in charge of a motor vehicle that is involved in an accident shall:

(a) notify the following persons as soon as is practicable after the accident:

(i) the person in charge of any other motor vehicle that is involved in the accident;

(ii) if any property in addition to a motor vehicle has been damaged as a result of the accident, the person in charge of that property; and

(b) provide the persons mentioned in clause (a) with the following information:

(i) his or her name and address;

(ii) his or her driver's licence number;

(iii) the number of the certificate of registration of the vehicle; and

(iv) particulars of any insurance affecting the vehicle.

[22] These individuals were in an accident with one another and, as provided for in the TSA, the individuals are required to share their name and address, driver's licence number, the certificate of registration, and particulars of any insurance that affects the vehicle. I would note that in a review of the TSA, I was unable to identify an explicit authority for SGI to share this information with the parties.

[23] Further, SGI has outlined that this driver information is required to be shared to enable individuals in an accident to exercise their legal rights. This includes the right to sue and

obtain insurance coverage. SGI asserts that given the potential magnitude of harm arising from an accident, the government's expectation is that, as a driver on a public roadway, you forego the right to privacy of this information in the event of an accident. I agree as it is clearly laid out in the TSA that parties involved in an accident are required to share the information. However, I need to consider if SGI also has the authority to share that information with the drivers.

[24] SGI has asserted that Individual 1 indicated that he was going to take this matter to court. This was supported by the May 5, 2018 email exchange provided to my office by SGI, where Individual 1 stated "I will be taking this to court." Subsection 17(2)(b) of the FOIP Regulations provides:

17(2) For the purposes of clause 29(2)(u) of the Act, SGI may disclose registration information to:

...

(b) legal counsel acting in a matter directly related to an accident or a claim for damages arising out of the ownership, operation or use of the vehicle;

[25] As Individual 1 asserted he would be taking this to court, the Adjuster provided the name and mailing address of Individual 2, along with a link to the Small Claims Court website.

[26] In its submission, SGI asserts that section 17 of the FOIP Regulations allows the disclosure of registration information (name and address) to legal counsel representing an individual in an accident. Further SGI notes that the legislative intent was not to penalize self-represented litigants who would require the same access to the same information. Finally, SGI notes that the intention of the legislation here is really to ensure all individuals involved in accidents have access to this information to enable them to effectively exercise their legal rights.

[27] These cases are handled by Small Claims Court. From its website, Small Claims Court hears claims that do not exceed \$30,000 in value. The Court has been structured in a way that it is a simpler process for litigants to represent themselves. The website states:

Small Claims Court is meant to be an easier and less expensive way to resolve disputes. People can approach the Court knowing that the staff can help prepare the necessary forms and that the judge is skilled in settling disputes. While lawyers can handle Small Claims cases, **most people choose to represent themselves.**

[Emphasis added]

[28] However, even though Individual 1 outlined intentions to take the matter to court, and the majority of individuals represent themselves in Small Claims Court, the fact remains that subsection 17(2)(b) of the FOIP Regulations specifically states that the information can be disclosed to legal counsel.

[29] The information was provided to Individual 1, and not to Individual 1's legal counsel. Therefore, subsection 17(2)(b) does not apply in this case. For clarity, SGI should consider recommending an amendment to subsection 17(2)(b) of the FOIP Regulations so that it includes disclosures of this type of information to self-represented litigants.

[30] Section 16 of the FOIP Regulations provides other prescribed circumstances when a government institution can disclose personal information. Specifically, subsection 16(f) of the FOIP Regulations provide:

**16** For the purposes of clause 29(2)(u) of the Act, personal information may be disclosed:

...

(f) for the purpose of commencing or conducting a proceeding or possible proceeding before a court or tribunal.

[31] It is clear from the email chain that Individual 1 intended to take this matter to court. For this section to apply, the proceeding does not have to be imminent, there must just be a possible proceeding before a court. Therefore, SGI's authority to disclose this information to Individual 1 is found under subsection 16(f) of the FOIP Regulations.

[32] Therefore, I find SGI had the authority to disclose Individual 2's name and address to Individual 1 pursuant to subsection 16(f) of the FOIP Regulations.



### **III FINDINGS**

[33] I find the fact that Individual 2 was in an accident to be personal information.

[34] I find SGI had the authority to disclose Individual 2's name and address to Individual 1 pursuant to subsection 16(f) of the FOIP Regulations.

### **IV RECOMMENDATION**

[35] I recommend SGI take no further action on this file.

Dated at Regina, in the Province of Saskatchewan, this 13th day of May, 2019.

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