

**██████████ AND SASKATCHEWAN GOVERNMENT INSURANCE
REPORT OF THE INFORMATION AND PRIVACY COMMISSIONER**

This matter initially came to my attention by letter to me from Mr. Brad Wall, M.L.A. for Swift Current, dated November 21, 2000. The letter outlined the concerns of ██████████ regarding recent action of Saskatchewan Government Insurance ("SGI") and read in part as follows:

"I have recently been in contact with ██████████ of ██████████, an automobile accident victim who is involved in a dispute with the Personal Injury Protection Plan (also known as "no-fault insurance") as administered by Saskatchewan Government Insurance (SGI). Mr. Foster believes that he is being treated unfairly by SGI and in order to make his point to government officials, he decided to stage a protest in Saskatoon earlier this month. In response to the media interest generated by the protest, SGI officials released information to the media regarding the amount of money paid to ██████████ by SGI in the form of injury benefits, apparently by way of "*The Freedom of Information and Privacy Act.*" ██████████ is of the opinion that this type of information is both personal and confidential and he questions SGI's conduct in this situation."

My communications respecting ██████████, subsequent to the initial letter from Mr. Wall were with ██████████, who was authorized by ██████████ to speak on his behalf with me. Additionally, I have spoken with ██████████ personally by telephone on one occasion.

██████████ informed me that he chained himself to the front door of the office of SGI on November 21, 2000 from approximately 7:45 a.m. to 11:30 a.m. He wished to publicly demonstrate his dissatisfaction over the manner in which SGI had dealt and was dealing with his claim for benefits under *The Automobile Accident Insurance Act.*

During the course of his demonstration, a television reporter spoke with ██████████ and he told her, amongst other things, the amounts of money had had received from SGI by way of monthly payments. He did not reveal the fact that SGI had paid him \$60,000.00 as a lump sum payment for permanent disability.

A representative of SGI was also interviewed by a television reporter that day. [REDACTED] advises me that he has a tape of that interview and that the SGI representative informed the reporter that [REDACTED] had received from SGI "over \$100,000.00 including \$60,000.00 for impairment". [REDACTED] objects to SGI revealing that he received \$60,000.00 for impairment.

[REDACTED] has other complaints respecting SGI; my authority is limited to any issue of privacy raised in the circumstances.

My authority respecting the release of information by a government institution is set forth in Section 33 of *The Freedom of Information and Protection of Privacy Act* ("the Act"), which provides as follows:

"33 The commissioner may:

- (a) offer comment on the implications for privacy protection of proposed legislative schemes or government programs;
- (b) after hearing the head, recommend that a government institution:
 - (i) cease or modify a specified practice of collecting, using or disclosing information that contravenes this Act; and
 - (ii) destroy collections of personal information that is collected in contravention of this Act;
- (c) in appropriate circumstances, authorize the collection of personal information in a manner other than directly from the individual to whom it relates;
- (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."

My review of the circumstances satisfies me that SGI did disclose personal information respecting [REDACTED]. Following [REDACTED] demonstration at the SGI office in Saskatoon on November 7, 2000, SGI provided media with information. SGI's understanding of these facts was described to me in a letter from Mr. Ken Lerner, Access Officer Freedom of Information for SGI, dated November 28, 2000, in the following words:

“SGI was approached by the media for its response to [REDACTED]'s allegations. SGI advised the media that [REDACTED] had not exercised his option under Part VIII to appeal, but that SGI would be reviewing his file prior to November 10, 2000. When asked by the media what made up the payments to [REDACTED], SGI disclosed that there was a total of \$107,000 was paid out, of which \$60,000 was for permanent impairment. The balance was for income replacement, home care, various medical expenses and home renovations”

The *Act* describes what constitutes personal information. Section 24(1)(c) provides as follows:

“24(1) Subject to subsection (2), “personal information” means personal information about an identifiable individual that is recorded in any form, and includes:

(c) information that relates to health care that has been received by the individual or to the health history of the individual;”

A government institution (which SGI is under the *Act*) is prohibited from disclosing personal information in its possession or under its control, without the written consent of the person to whom the information relates except in certain circumstances (Section 29 of the *Act*).

Section 29(2) of the *Act* sets forth numerous circumstances in pursuance of which personal information in the possession or under the control of a government institution may be released. These circumstances include the following as set forth under Section 29(2) (o)(i) of the *Act*:

“29(2) Subject to any other Act or regulation, personal information in the possession or under the control of a government institution may be disclosed: ...

- (o) for any purpose where, in the opinion of the head:
 - (i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure; or”

It is the above referenced provision of the *Act* that is relied upon by SGI for disclosing the personal information related to [REDACTED] in the manner previously particularized in this Report. In discussion with me of January 3, 2001, Mr. Larry Fogg, President of SGI, confirmed that he was of the opinion that the public interest in knowing the particulars of the benefits paid to [REDACTED] by SGI outweighed any invasion of the privacy of [REDACTED] that resulted from the disclosure.

The reasons relied upon by Mr. Fogg for developing the opinion set forth in the previous paragraph are outlined in the letter to me from Mr. Lerner of November 28, 2000. The reasons are described as follows:

[REDACTED] elected to go public to protest the termination of his PIPP income replacement benefits by SGI and SGI's refusal to pay for retraining. In doing so he omitted information known to him and relevant to SGI's handling of his claim, firstly that in light of new medical information SGI was reconsidering its decision terminating his income replacement benefits and secondly that, to date he had received PIPP benefits totalling \$107,000 out of which \$60,000 was for permanent impairment.

SGI is of the view that the amount of PIPP benefits paid to or on behalf of [REDACTED] along with its decision to reconsider termination of his income replacement benefits serves as evidence of a fair and reasonable approach adopted by SGI in the handling of his claim. The failure of [REDACTED] to disclose this information and instead to focus public attention on termination of his income replacement benefits and refusal to pay for retraining was misleading and served to erode public confidence in SGI's administration of the Personal Injury Protection Plan. SGI views public confidence in its administration of the Personal Injury Protection Plan as vital to achieving the goals of the plan. SGI considered it in the public interest to disclose the amount of the PIPP benefits paid to [REDACTED] to restore public confidence in its [sic] administration of the Personal Injury Protection Plan. The public interest in disclosure of this information in this case, in our

opinion, clearly outweighed any invasion of [REDACTED] privacy (arguably a right of privacy that he had elected to waive by going public with his dispute with SGI) that could result from the disclosure”

In our discussion of January 3, 2001, Mr. Fogg informed me that the words quoted above not only reflected the position of SGI but the reasons he relied on as the head for justifying his opinion under Section 29(2)(o)(i) of the *Act*.

[REDACTED] response to the position of SGI in this regard was articulated on his behalf by [REDACTED]. She asserted that the act of releasing information respecting [REDACTED] benefits was an act of intimidation on the part of SGI and has the effect of discouraging other accident victims from demonstrating or speaking publicly about their concerns. [REDACTED] said to me, in part, by letter dated December 5, 2000:

“The Coalition Against No-Fault Insurance has experienced similar difficulties with SGI in the past, on two other separate occasions. We have been worried, that when accident victims voice their complaints about the Personal Injury Protection Plan (PIPP), Saskatchewan Government Insurance sees this as an occasion to release private and personal information from the victim’s file. We are concerned this may have a chilling action on the public expression of valid criticisms of the Personal Injury Protection Plan (PIPP).

When avenues to the media are repressed by reprisals from Saskatchewan Government Insurance in the form of the release of personal files to the media, democratic activity is under attack, and relevant information in the public interest is not being conveyed. In the opinion of [REDACTED], Saskatchewan Government Insurance was sending the public, and accident victims a clear message of intimidation and therefore abusing their power as a government agency. This message not only further victimized [REDACTED], but also attempted to discourage other accident victims from voicing their frustrations in a similar manner.”

[REDACTED] submitted further in her letter:

“[REDACTED] felt he had no other choice but to peacefully and quietly demonstrate his anger and frustration in front of SGI’s office on November 7, 2000. All of the relevant information regarding [REDACTED] case was presented to the media,

including his monthly Income Replacement Benefits; there was no deliberate act on [REDACTED] part to mislead the media in any way, only to inform the media and the public of his plight. The amounts of money that [REDACTED] made over the course of his recovery should have been irrelevant, as according to SGI, PIPP entitles you to Income Replacement Benefits (IRB) for life if you need them. We consider this a deliberate attempt by SGI to misconstrue the facts and downplay their improprieties. [REDACTED] protest was not on the amount of money he had previously received from his IRB, but that the Personal Injury Protection Plan was not being administered properly, or according to the act.”

As previously observed, the privacy powers of myself as commissioner are those set forth in Section 33 of the *Act*. Relative to this issue, I “may, after hearing the head recommend that a government institution cease or modify a specific practice ... of disclosing information that contravenes ...” the *Act*.

Should I conclude that a specific practice of a government institution of disclosing information contravenes the *Act* I can only recommend that the practice be discontinued or modified. I have no power to order apologies be given or money paid to anyone by way of penalty as requested, in this case, by [REDACTED] on behalf of [REDACTED].

In the circumstances of this complaint, I have concluded that no recommendation by me would be appropriate under Section 33 of the *Act*. Before I can consider making a recommendation, the provisions of Section 33 require me to conclude that the *Act* of disclosing the personal information of [REDACTED] by SGI constituted a contravention of the *Act*. The facts do not warrant such a conclusion.

[REDACTED] publicly demonstrated against the action of SGI respecting [REDACTED] entitlements under the provisions of *The Automobile Accident Insurance Act*. He clearly wanted the community to know of his dissatisfaction over the manner in which he perceived SGI had dealt with his statutory rights. In the course of his demonstration, he disclosed to the media the details of a portion of the payments that had been made to him by SGI.

In discussion with members of the media, a representative of SGI informed the media of all the amounts of money that had been paid to [REDACTED] under the Personal Injury Protection Plan provision of *The Automobile Accident Insurance Act*, including \$60,000.00 paid for impairment. The head of SGI has expressed the opinion that apprising the public of the fact that SGI had paid to [REDACTED] the amounts to which he was statutorily entitled was of greater importance than any invasion of [REDACTED] privacy by publicly revealing the figures. It is said on behalf of SGI that the revealing of this information would offset any erosion of public confidence in SGI that [REDACTED] public demonstration had caused.

[REDACTED] told part of the financial story to the media. SGI subsequently informed the media of the balance of the financial story, which was nothing more than describing the dollar value of benefits set forth by way of statute to which [REDACTED] was entitled.

I have no reason to believe that the opinion of Fogg, developed under Section 29(2)(o)(i) of the *Act* was unreasonable. For me to conclude that the disclosing of the information in question constituted a contravention of the *Act*, I am of the view that I would have to conclude that the opinion developed by Mr. Fogg was, when viewed objectively, unreasonable, which I have concluded is not the case.

Dated at Regina, in the Province of Saskatchewan, this 11th day of January, 2001.

[REDACTED]

GERALD L. GERRAND, Q.C.
Commissioner of Information
and Privacy for Saskatchewan