

## SASKATCHEWAN

### OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

#### INVESTIGATION REPORT F-2013-002

#### Saskatchewan Government Insurance

**Summary:**

The Office of the Saskatchewan Information and Privacy Commissioner (OIPC) received a formal breach of privacy complaint that related to the collection of personal information and personal health information of a claimant (hereinafter referred to as the Complainant) by Saskatchewan Government Insurance (SGI) under *The Automobile Accident Insurance Act* (AAIA). The Complainant alleged this collection was excessive. SGI took the position that the OIPC had no authority to investigate these matters since neither *The Health Information Protection Act* (HIPA) Parts II, IV and V, nor *The Freedom of Information and Protection of Privacy Act* (FOIP) applied to the Complainant's personal information and personal health information as it related to Part VIII of AAIA. The Commissioner considered representations from SGI and, consistent with past Reports issued by the Commissioner, concluded that there is no evidence that the Legislative Assembly of Saskatchewan would have intended to create such a gap in legislated privacy protection and that, in fact, there is no such gap as alleged by SGI. The Commissioner, however, recommended that the Legislative Assembly of Saskatchewan amend the appropriate legislation to clarify the rules that will apply to the personal information collected, used and disclosed by SGI in its activities under AAIA and the role of the OIPC in overseeing SGI's statutory responsibilities under FOIP and HIPA. He also recommended that SGI provide an update on the recommendations he made in his Investigation Report F-2010-001, as those recommendations would be similar to the ones made in this case.

**Statutes Cited:**

*The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01, ss. 2(1)(d)(ii), 24, 24(1)(k), 25, 26; *The Freedom of Information and Protection of Privacy Regulations*, S.R. c. F- 22.01, s. 18;

*The Health Information Protection Act, S.S. 1999, c. H-0.021, ss. 2(t)(i), 4; The Automobile Accident Insurance Act, S.S. 1978, c. A-35, s. 165.*

**Authorities Cited:** Saskatchewan OIPC Investigation Reports F-2004-001, F-2007-001, LA-2007-002, F-2009-001, F-2010-001, LA-2010-001, F-2012-001, F-2012-005; Saskatchewan OIPC Review Reports F-2006-005, F-2007-002.

## **I BACKGROUND**

[1] The Complainant contacted my office on July 14, 2010 requesting an investigation into the collection of information by Saskatchewan Government Insurance (SGI) that the Complainant asserts was not needed by SGI to process her injury claim.

[2] The complaint is highlighted here and includes the following statements made by the Complainant:

My claim request results from my SGI personal injury representative requesting me to obtain my medical files from 2004 until current (May 6<sup>th</sup>) pertaining to anything to do with my neck and back...I willingly agreed to get my medical files...[the SGI Personal Injury Representative] stressed the importance of just asking for my medical files from 2004 until current with information only relating to my neck and back. My boyfriend drove me to [the Medical Clinic] on May 6<sup>th</sup> 2008 and I asked the medical receptionist to give me a copy of medical files that includes anything pertaining to my neck and back from 2004 until current...The receptionist advised that to release medical files she would/[the SGI Personal Injury Representative] would need to send in a standard letter head requesting this information.

...I called [the SGI Personal Injury Representative] and advised her what the medical receptionist needed [the SGI Personal Injury Representative] to do for her to release the files...

[The SGI Personal Injury Representative] advised she would only request for information related only to my neck and back. I advised [the SGI Personal Injury Representative] that once she received this information I would also like a copy sent to me.

...Instead of [the SGI Personal Injury Representative] just sending the medical files I requested from [the Medical Clinic] she sent my entire file [to the Complainant] on January 18, 2009 and is reflected in the enclosed letter dated January 13, 2009.

...

...I also wanted to know which treatment facilities received from SGI my medical file that was obtained from [the Medical Clinic's] record department...

- [3] The Complainant first attempted to resolve her concerns with SGI. On January 27, 2010 SGI sent the Complainant a letter stating the following:

Further to your telephone call where you expressed concern regarding SGI's collection of your medical information I have the following to report.

1. A review of your file indicates that you received a complete copy of your medical file on January 13, 2010. Since that date there has been no additional information collected.

2. I note that SGI has referred you to the following agencies in the course of treating you for accident related injuries:

- (a) [Rehabilitation Consultant];
- (b) [Rehabilitation Program];
- (c) [Physiotherapy and Acupuncture Clinic]; and
- (d) [Orthopedic Specialist Clinic].

3. [The SGI Personal Injury Representative] advises that the following medical information was provided to each agency during the time you received treatment:

...[list of documents sent to each of the above agencies]

4. As requested, I enclose a copy of the [SGI Personal Injury Representative's] correspondences with [the Medical Clinic] requesting your clinical notes. Although [the SGI Personal Injury Representative's] request is broad, by your own admission, she endeavored to limit SGI's medical the [sic] collection by having you attend at the clinic and obtain only those notes related to your neck and back. I am unable to understand why the clinic refused to provide same to you at that time. I suggest you raise this with your family practitioner.

As regards SGI's collection practice, SGI does endeavor to only collect information relevant to an injury claim. Depending on the length of the claim, the injuries suffered and the nature of the complaints, this can involve a need for an extensive review of a client's medical file. Furthermore, it is often difficult to determine relevancy prior to an actual review of the documents particularly if the medical clinic doesn't edit the notes. Certainly, in this regard it remains critical that you as a client take an interest in your file management.

5. As regard the complete collection of your medical notes, I enclose the original copy of the notes received from [the Medical Clinic]. In addition, I enclose a redacted copy of those notes containing only that information our office deems relevant to your current injury. The redacted copy is provided to you so that you

may see what SGI has removed from its injury file. A redacted copy of these notes (identical to that provided to you) has been placed on [the SGI Personal Injury Representative's] file. [The SGI Personal Injury Representative] no longer has access to your full clinical notes as the original has been returned to you.

...

[4] My office advised SGI that it would commence an investigation into the matter by way of letter on or about November 25, 2010. My office requested more information pertaining to the matter and all relevant policies and procedures that were in place at the time of the incident.

[5] On December 1, 2010, my office received a submission from SGI stating the following:

Respectfully, this file concerns the collection of medical information under Part VIII of *The Automobile Accident Insurance Act* and SGI continues to remain of the view that your office does not have jurisdiction under section 33 of *The Freedom of Information and Protection of Privacy Act* to initiate an investigation into this matter. As SGI's position in this regard has been set forth in several other files, I have refrained from reiterating it in this letter...

Regarding your question as to whether SGI has breached [the Complainant's] privacy, I can advise you that SGI remains of the view the collection of the medical information was authorized pursuant to section 165 of *The Automobile Accident Insurance Act* and a consent form completed by [the Complainant]. Accordingly, SGI is of the view there was no breach of [Complainant's] privacy. SGI has simply, upon review of the medical information, returned to [the Complainant] that information that the corporation determined was not required for the adjudication of her claim.

[6] On June 11, 2012, my office contacted SGI and stated the following:

[We] have reviewed the file including the original complaint and SGI's response to our office dated December 1, 2010. SGI's response indicated "...SGI continues to remain of the view that your office does not have jurisdiction under section 33 of *The Freedom of Information and Protection of Privacy Act* [FOIP]..." As you know, our office has issued two investigation reports involving the over-collection of personal information and personal health information by SGI ([Investigation Reports] F-2010-001 and H-2004-001) and the issue of paramountcy. We have found that specific sections of HIPA [*The Health Information Protection Act*] and FOIP still apply despite section 35 of *The Automobile Accident Insurance Act* (AAIA).

The details of this current case (191/2010) appear to be similar to these two public investigation reports. SGI's position on this case suggests that we are unlikely to

resolve this case informally. Therefore, [we are] suggesting one of two options in order to move this file towards resolution:

1. [We] can go straight to the recommendations outlined in investigation Report F-2010-001 and request details of how SGI has followed through with the recommendations. Those recommendations would mirror what would be recommended in the current case before us. Provided the recommendations were complied with fully then that could assist in moving the current case towards resolution ([Investigation] Report F-2010-001 was issued after this complaint was received so many of the issues in the current case may have been addressed through compliance with the recommendations in F-2010-001);

OR

2. We could go straight to public Investigation Report on this case outlining the similar issues involved, highlighting the connection to the two earlier Reports and indicating that this impasse is still unresolved with SGI.

Which direction would you prefer? In order for us to pursue option 1, we would need SGI to fully cooperate and provide details of changes made, copies of old and new policies and procedures etc. Unless SGI is willing to do that option 1 will not work...

[7] On or about August 23, 2012, following no response to the correspondence noted above, my office provided SGI with its preliminary analysis. In the preliminary analysis, we found that all Parts of FOIP applied to the personal information of the Complainant in this case. Further, we found that SGI had not abided by the 'need-to-know' or 'data minimization' principles in this case with respect to its 'over-collection' of the Complainant's personal information. We recommended that SGI update my office on how it has changed its policies and procedures since my Investigation Report F-2010-001. Further, we requested that SGI update my office on how it has revised its procedure for collection of personal information to ensure that it is not over-collecting the personal information of claimants. This should have included a plan to prevent the over-collection at the time of the request for personal information by SGI.

[8] On September 21, 2012, my office received a response from SGI to our preliminary analysis stating the following:

...

As indicated in my initial correspondence of December 1, 2010, SGI takes issue with your office's jurisdiction to investigate this matter.

SGI acknowledges that it is a trustee under *The Health Information Protection Act*.

...

SGI acknowledges that *The Freedom of Information and Protection of Privacy Act* (hereinafter "FOIPP") seeks to regulate government institutions handling of personal information; however, HIPA specifically removes personal health information from consideration under that Act...

...

The Commissioner's jurisdiction under FOIPP is not salvaged by subsection 4(5) of HIPA as subsection 24(1.1) of FOIPP specifically states that personal information governed by that Act does not include personal health information. In consequence, the only two Acts that apply to the regulation of SGI's Injury Program are *The Automobile Accident Insurance Act* and *The Health Information Protection Act*.

...

Accordingly, SGI remains of the view that there is a significant legal concern around the issue of jurisdiction that precludes further investigation of this matter by your office...

- [9] Given this response, on September 21, 2012, my office contacted SGI and advised the following:

...

It appears from SGI's response to our office today that neither of these recommendations are addressed. Rather, what is addressed is that SGI disagrees with our office's conclusions regarding its jurisdiction in this case. Regardless of the disagreement around jurisdiction the matter can still be resolved informally provided SGI provide what is requested in our recommendations. Short of that, we have no choice but to proceed to issue a public investigation Report.

...

- [10] SGI was given until October 5, 2012 to provide the material requested in my two recommendations of August 23, 2012. On October 11, 2012, after receiving no response, my office advised SGI that we would be proceeding to issue a public Investigation Report on this matter.

### III ISSUES

1. Which law applies to Saskatchewan Government Insurance in this matter?
2. Is there “personal information” involved in this complaint as defined by *The Freedom of Information and Protection of Privacy Act*?
3. Did Saskatchewan Government Insurance have the authority to “collect” the personal information in accordance with *The Freedom of Information and Protection of Privacy Act*?

### IV DISCUSSION OF THE ISSUES

1. Which law applies to Saskatchewan Government Insurance in this matter?

[11] SGI is a “government institution” as defined in section 2(1)(d)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP)<sup>1</sup> and is therefore subject to it as it relates to “personal information”.<sup>2</sup>

[12] SGI is also a “trustee” as defined in section 2(t)(i) of *The Health Information Protection Act* (HIPA)<sup>3</sup> and is therefore also subject to that Act as it relates to “personal health information”.<sup>4</sup>

[13] Both FOIP and HIPA may be engaged on the facts in this case, therefore it is important to clarify the issue of paramountcy.

---

<sup>1</sup>*The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01.

<sup>2</sup>This has also been determined in previous Saskatchewan Information and Privacy Commissioner (hereinafter SK OIPC) Review Reports F-2006-005 and F-2007-002 and Investigation Reports H-2004-001, F-2010-001 and F-2012-005, available at [www.oipc.sk.ca/reviews.htm](http://www.oipc.sk.ca/reviews.htm).

<sup>3</sup>*The Health Information Protection Act*, S.S. 1999, c. H-0.021.

<sup>4</sup>This has also been determined in previous SK OIPC Investigation Reports H-2004-001, F-2010-001 and F-2012-005, available at [www.oipc.sk.ca/reviews.htm](http://www.oipc.sk.ca/reviews.htm).

[14] For the purposes of its work, SGI relies on *The Automobile Accident Insurance Act* (AAIA)<sup>5</sup> for its authority. I have addressed the issue of paramountcy and the AAIA in previous public Reports.<sup>6</sup>

[15] Section 4 of HIPA provides as follows:

4(1) Subject to subsections (3) to (6), where there is a conflict or inconsistency between this Act and any other Act or regulation with respect to personal health information, this Act prevails.

(2) Subsection (1) applies notwithstanding any provision in the other Act or regulation that states that the provision is to apply notwithstanding any other Act or law.

(3) Except where otherwise provided, *The Freedom of Information and Protection of Privacy Act* and *The Local Authority Freedom of Information and Protection of Privacy Act* do not apply to personal health information in the custody or control of a trustee.

(4) Subject to subsections (5) and (6), Parts II, IV and V of this Act do not apply to personal health information obtained for the purposes of:

...

(b) Part VIII of *The Automobile Accident Insurance Act*;

...

(5) Sections 8 and 11 apply to the enactments mentioned in subsection (4).

(6) ***The Freedom of Information and Protection of Privacy Act* and *The Local Authority Freedom of Information and Protection of Privacy Act* apply to an enactment mentioned in subsection (4) unless the enactment or any provision of the enactment is exempted from the application of those Acts by those Acts or by regulations made pursuant to those Acts.**<sup>7</sup>

[emphasis added]

---

<sup>5</sup>*The Automobile Accident Insurance Act*, S.S. 1978, c. A-35.

<sup>6</sup>SK OIPC Investigation Reports H-2004-001 at [24] to [28], F-2010-001 at [16] to [36] and F-2012-005 at [13] to [32], available at [www.oipc.sk.ca/reviews.htm](http://www.oipc.sk.ca/reviews.htm).

<sup>7</sup>*Supra* note 3 at section 4.

[16] I refer to, and incorporate here, my analysis from my recent Investigation Report F-2012-005.<sup>8</sup> In that Investigation Report, I found the following which is applicable in this case also:

- All Parts of FOIP apply to the personal information collected, used and/or disclosed as it relates to the adjudication of the Complainant's injury claim file.
- Parts II, IV and V of HIPA do not apply as it relates to the Complainant's personal health information collected, used and/or disclosed by the insurer (SGI) for the purpose of Part VIII of the AAIA.
- The remaining Parts of HIPA still apply including section 16 which requires a trustee to have appropriate administrative, technical and physical safeguards in place to protect personal health information. However, this does not appear to be at issue in this case.
- Where HIPA does not apply to the personal health information, FOIP will apply and the information would be treated as personal information instead.

[17] Therefore, the applicable law in this case is FOIP.

**2. Is there “personal information” involved in this complaint as defined by *The Freedom of Information and Protection of Privacy Act*?**

[18] Our customary analysis, when dealing with a privacy breach complaint under Part IV of FOIP, is to first determine whether there is “personal information” involved and then to consider which of the three primary privacy activities is engaged (i.e. collection, use and/or disclosure).

[19] The definition of “personal information” is in section 24 of FOIP and provides as follows:

**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:

---

<sup>8</sup>SK OIPC Investigation Report F-2012-005 at [16] to [21], available at [www.oipc.sk.ca/Reports/Investigation%20Report%20F-2012-005.pdf](http://www.oipc.sk.ca/Reports/Investigation%20Report%20F-2012-005.pdf).

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) **Repealed.** 1999, c.H-0.021, s.66.

(d) any identifying number, symbol or other particular assigned to the individual, other than the individual's health services number as defined in *The Health Information Protection Act*;

(e) the home or business address, home or business telephone number or fingerprints of the individual;

(f) the personal opinions or views of the individual except where they are about another individual;

(g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

(h) the views or opinions of another individual with respect to the individual;

(i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;

(j) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(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.

(1.1) "Personal information" does not include information that constitutes personal health information as defined in *The Health Information Protection Act*.

(2) "**Personal information**" does not include information that discloses:

(a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a government institution or a member of the staff of a member of the Executive Council;

(b) the salary or benefits of a legislative secretary or a member of the Executive Council;

(c) the personal opinions or views of an individual employed by a government institution given in the course of employment, other than personal opinions or views with respect to another individual;

(d) financial or other details of a contract for personal services;

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

(f) details of a discretionary benefit of a financial nature granted to an individual by a government institution;

(g) expenses incurred by an individual travelling at the expense of a government institution.

(3) Notwithstanding clauses (2)(e) and (f), “**personal information**” includes information that:

(a) is supplied by an individual to support an application for a discretionary benefit; and

(b) is personal information within the meaning of subsection (1).<sup>9</sup>

[20] Again, I refer to and incorporate here my analysis from my recent Investigation Report F-2012-005.<sup>10</sup> As noted earlier, I found the following: “Where HIPA does not apply to the personal health information, FOIP will apply and the information would be treated as personal information instead”.

[21] On July 14, 2010, the Complainant provided my office with copies of medical records that SGI had received from her physician’s office. Included was a copy of physician’s notes from the Complainant’s medical file.

---

<sup>9</sup>*Supra* note 1 at section 24.

<sup>10</sup>*Supra* note 8 at [16] to [21].

[22] The following are examples of the type of information involved from one physician's handwritten notes (although hard to read):

...

Nov 25/05...

Has had [a sexually transmitted disease] in the past

...

Oct 1/07            Hyperthyroid...

...

[23] Therefore, even though this type of information would normally be personal health information under HIPA, when it is used by SGI for the adjudication of the injury claim it would be treated as personal information under FOIP. This is due to the paramountcy provisions noted earlier. The above information would be considered personal information pursuant to section 24(1)(k) of FOIP because it is the individual's name combined with other information that is personal in nature.

**3. Did Saskatchewan Government Insurance have the authority to “collect” the personal information in accordance with *The Freedom of Information and Protection of Privacy Act*?**

[24] On the evidence provided to us, the “use”<sup>11</sup> and “disclosure”<sup>12</sup> of the Complainant's personal information for the purpose of the adjudication of the injury claim does not appear to be at issue. What appears to be at issue is “collection”<sup>13</sup> of the personal information. Therefore, this Investigation Report will focus on collection only.

---

<sup>11</sup>*Supra* note 8, I defined “use” at [44] as follows: “Use indicates the internal utilization of personal information by a public body and includes sharing of the personal information in such a way that it remains under the control of that public body”.

<sup>12</sup>*Supra* note 8, I defined “disclosure” at footnote 31 as follows: “Disclosure is the sharing of personal information with a separate entity, not a division or branch of the public body or trustee in possession or control of that record/information”.

<sup>13</sup>I provided a definition for “collection” in my Investigation Report F-2012-001 at [17] as follows: “Collection occurs when a public body gathers, acquires, receives or obtains personal information. It includes the gathering of information through forms, interviews, questionnaires, surveys, polling, and video surveillance. There is no restriction on how the information is collected. The means of collection may be writing, audio or videotaping, electronic data entry or other means.”

[25] There are two key issues in this case relating to the collection of the Complainant's personal information by SGI:

- a) Was SGI's consent form signed by the Complainant appropriate? and
- b) Was there over-collection of the Complainant's personal information by SGI?

**a) Was SGI's consent form signed by the Complainant appropriate?**

[26] Sections 25 and 26 of FOIP outline the rules regarding the collection of personal information by a government institution:

**25 No government institution shall collect personal information unless the information is collected for a purpose that relates to an existing or proposed program or activity of the government institution.**

**26(1) A government institution shall, where reasonably practicable, collect personal information directly from the individual to whom it relates, except where:**

(a) **the individual authorizes collection by other methods;**

(b) the information is information that may be disclosed to the government institution pursuant to subsection 29(2);

(c) the information:

(i) is collected in the course of, or pertains to, law enforcement activities, including the detection, investigation, prevention or prosecution of an offence and the enforcement of:

(A) an Act or a regulation; or

(B) an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada; or

(ii) pertains to:

(A) the history, release or supervision of persons in custody, on parole or on probation; or

(B) the security of correctional institutions;

(d) the information is collected for the purpose of commencing or conducting a proceeding or possible proceeding before a court or tribunal;

(e) the information is collected, and is necessary, for the purpose of:

(i) determining the eligibility of an individual to:

(A) participate in a program of; or

(B) receive a product or service from;

the Government of Saskatchewan or a government institution, in the course of processing an application made by or on behalf of the individual to whom the information relates; or

(ii) verifying the eligibility of an individual who is participating in a program of or receiving a product or service from the Government of Saskatchewan or a government institution;

(f) the information is collected for the purpose of:

(i) management;

(ii) audit; or

(iii) administration of personnel;  
of the Government of Saskatchewan or one or more government institutions;

(g) the commissioner has, pursuant to clause 33(c), authorized collection of the information in a manner other than directly from the individual to whom it relates;  
or

(h) another manner of collection is authorized pursuant to another Act or a regulation.

(2) A government institution that collects personal information that is required by subsection (1) to be collected directly from an individual shall inform the individual of the purpose for which the information is collected unless the information is exempted by the regulations from the application of this subsection.

(3) Subsections (1) and (2) do not apply where compliance with them might result in the collection of inaccurate information or defeat the purpose or prejudice the use for which the information is collected.<sup>14</sup>

[emphasis added]

---

<sup>14</sup>*Supra* note 1 at sections 25 and 26.

[27] Section 25 of FOIP provides that SGI must be able to demonstrate that the collection of the Complainant's personal information was for a specific purpose, necessary and lawful in accordance with section 25 of FOIP.

[28] Section 26 of FOIP provides that SGI must collect the personal information directly from the Complainant, unless indirect collection is authorized in one of the eight subsections of 26 of FOIP.

[29] With regards to section 25, it appears, based on the evidence before us in this case, that the collection of the Complainant's personal information was for the specific purpose of adjudicating the Complainant's injury claim under AAIA and for no other purpose.

[30] With regards to section 26, it appears that the Complainant signed a consent form. By signing this consent, SGI may be able to rely on section 26(1)(a) for authority to collect the Complainant's personal information indirectly from her physicians.

[31] This written consent would also satisfy the requirement in section 18 of *The Freedom of Information Protection of Privacy Regulations* which states:

**18** Where the Act requires the consent of an individual to be given, the consent is to be in writing unless, in the opinion of the head, it is not reasonably practicable to obtain the written consent of the individual.<sup>15</sup>

[32] However, there are issues with the consent form signed by the Complainant. I have addressed the issue of the consent form used by SGI in my previous Investigation Report F-2010-001.

[33] In this Investigation Report, I said the following:

[37] In the cases in question, there are complaints about the consent form utilized by SGI, about the ability of the insured to modify the consent and about the obligations of SGI to honor such consent forms. In one case, the claimant was presented with a consent form that was on its face in effect for only a one year period but that did not

---

<sup>15</sup>*The Freedom of Information and Protection of Privacy Regulations*, S.R. c. F- 22.01, at section 18.

limit or stop SGI collecting personal information after one year elapsed. I should note that this office has also received a number of phone calls from Saskatchewan residents raising concerns about the SGI approach to consent from claimants but which have not resulted in formal investigations by our office.

...

[44] Consent is generally conceived as the free and voluntary act of a sovereign individual. Consent needs to be thought of as a process that provides the individual with a measure of control over their own personal information. Consent normally can be modified and can be revoked.

[45] What we have encountered in investigating these three complaints is that claimants who object to the consent form or who wish to modify the consent form to limit the amount of personal health information collected by SGI, even where that would be appropriate so as to screen out non-relevant personal health information, are advised that these modifications to the consent form are not possible. Furthermore, they are advised that if they fail to provide an executed consent form without modification their claim will be dismissed by SGI. In that sense, the consent form required by SGI cannot be considered a free and voluntary consent.

[46] In the result, consent is clearly not a requirement under FOIP for SGI to collect, use or disclose the personal information of a claimant provided the purpose for such collection, use or disclosure can be brought within sections 25, 28 and 29.

[47] **The difficulty with the use of consent forms by SGI is that it contributes to confusion and creates expectations that will not be met by SGI. The current consent process would lead a claimant to believe a measure of control is afforded him or her. In fact, any measure of control is entirely illusory. Section 165 of the AAIA and statutory condition 5 in section 35 of the AAIA require the claimant to provide “any information, and any authorization necessary to obtain that information, that is requested by the insurer...”. Section 183 of the AAIA makes it clear that refusing or neglecting to produce information required by the insurer or to provide an authorization reasonably required by the insurer to obtain the information entitles SGI to NOT pay a benefit to the claimant. It cannot fairly be said that in these circumstances the consent that is a pre-condition to resolving a compensation claim is free or voluntary. Rather it is a strict requirement in order to advance their claim. The consent form in use by SGI not only authorizes the release by a health care provider of personal information relevant to the specific claim but also the release of all personal information of the claimant regardless of relevance to the specific claim in issue.**

[48] Furthermore, by virtue of sections 72 and 168 of the AAIA, every physician, surgeon, chiropractor, physiotherapist, psychologist, massage therapist or dentist must furnish a report in respect of the injury forthwith and in such form as SGI may prescribe.

[49] The other major limitation on a government institution such as SGI is that it must “ensure that personal information being used by the government institution for an administrative purpose is as accurate and complete as is reasonably possible.” **This must be subject to the data limitation principle discussed above and cannot justify SGI collecting more personal information than is necessary for the specific claim in issue.**<sup>16</sup>

[emphasis added]

[34] The consent form signed by the Complainant in this case appears similar to the one I have commented on previously and was attached to the *Application For Injury Benefits* package provided to my office by the Complainant. The consent form reads as follows:

**IMPORTANT!  
PLEASE READ BEFORE YOU SIGN THIS FORM**

I am applying to the Saskatchewan Government Insurance (SGI) for any benefits to which I may be entitled under *The Automobile Accident Insurance Act* and Regulations.

The information on this form is true and correct in every respect and I agree to let my Personal Injury Representative know right away if anything changes that may affect my claim, including any return to work or income earned from employment.

I understand that the Criminal Code makes it an offence, punishable by fine and/or imprisonment, to obtain, or attempt to obtain, money or property (including benefits under *The Automobile Accident Insurance Act*) by deceit, falsehood or other fraudulent means; and that anyone who does so is also liable to reimburse SGI, in full, for any payment obtained this way.

I understand that holding back medical or income information, interfering with or delaying my recovery, or not cooperating with rehabilitation or with reasonable requests for medical examination may cause my benefits to be reduced or discontinued altogether.

I understand and agree that SGI may share the information regarding my claim for benefits with health care professionals, vocational rehabilitation professionals, Saskatchewan Community Resources & Employment, and independent adjusters. I further understand and agree that to better facilitate the administration of my claim, medical or vocational information may be exchanged directly between health care professionals or vocational rehabilitation professionals and I hereby authorize such direct exchange or provision of information.

---

<sup>16</sup>SK OIPC Investigation Report F-2010-001 at [37] and [44] to [49], available at [www.oipc.sk.ca/Reports/FINAL%20Investigation%20Report%20F-2010-001%20-%20DEC%2015.%202010.pdf](http://www.oipc.sk.ca/Reports/FINAL%20Investigation%20Report%20F-2010-001%20-%20DEC%2015.%202010.pdf).

I authorize SGI to undertake whatever investigations are necessary with respect to my claim for compensation, including examination of any medical and employment information and other SGI claim files. This may include a record of services provided by the Medical Services and/or Drug Plan of Saskatchewan Health.

SIGNED AT \_\_\_\_\_ THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_  
(city, town) (day) (month) (year)

YOUR SIGNATURE \_\_\_\_\_

PRINT YOUR NAME \_\_\_\_\_

WITNESS \_\_\_\_\_

**If this form was completed by someone other than the injured person:**

SIGNATURE \_\_\_\_\_

PRINT NAME \_\_\_\_\_

WITNESS \_\_\_\_\_

[35] This consent form appears to allow SGI to collect any and all information it wishes to in order to adjudicate an injury claim.

[36] The SGI Personal Injury Representative allegedly asked the Complainant to provide only records during a specific timeframe and that were relevant to her neck and back.

[37] However, when the SGI Personal Injury Representative proceeded to request the records she requested the full record during the timeframe specified. The SGI Personal Injury Representative requested the following in her letter to the medical clinic on May 6, 2009:

...As such, I require a copy of her medical file beginning January 1, 2004 until present.

Please provide me with a copy of her medical file. A copy of the authorization and release in this regard is enclosed...

[38] When responding to my office on December 1, 2010 SGI appeared to defend its collection stating the Complainant signed a release form:

Regarding your questions as to whether SGI has breached [Complainant's] privacy, I can advise you that SGI remains of the view **the collection of the medical information was authorized pursuant to section 165 of *The Automobile Accident Insurance Act* and a consent form completed by [Complainant]**...

[emphasis added]

[39] Section 165 of AAIA states:

**165(1) A claimant shall provide any information, and any authorization necessary to obtain that information, that is requested by the insurer for the purposes of this Part.**

(2) The insurer shall, as soon as is practicable, release to a claimant, at the claimant's request, all of the insurer's information concerning the claimant and his or her claim that the claimant:

(a) is entitled by law to receive; and

(b) may reasonably require for the purposes of this Part.<sup>17</sup>

[emphasis added]

[40] I incorporate, by reference, my commentary with regards to SGI's consent forms in my earlier Investigation Report F-2010-001 and expressly adopt the same for purposes of this analysis.<sup>18</sup>

[41] As previously recommended in that Report,<sup>19</sup> I again recommend that SGI not use consent forms in its adjudication of injury claims in order to avoid confusing claimants by giving them the impression that they have some measure of control in the process.

[42] If SGI determines that it wishes to continue using consent forms in this way, I recommend SGI change the consent form to respect the principles of need-to-know and data minimization.

---

<sup>17</sup>*Supra* note 5 at section 165.

<sup>18</sup>*Supra* note 16 at [37] to [50].

<sup>19</sup>*Ibid.* at [54].

**b) Was there over-collection of the Complainant's personal information by SGI?**

[43] Separate from the consent issue, the personal information that was collected by SGI in this case raises issues related to the need-to-know and data minimization principles.<sup>20</sup>

[44] In my Investigation Report F-2012-005, I explained these principles as follows:

[66] These two principles underlie section 28 of FOIP and section 23 and 26 of HIPA. The need-to-know principle means that SGI should collect, use and disclose only on a need-to-know basis. As well, data minimization means that SGI should collect, use or disclose the least amount of identifying information necessary for the purpose.<sup>21</sup>

[45] In my Investigation Report F-2010-001, I stated as follows:

[54] Given our determination that consent is not required by SGI and that its attempts to collect consent make its process confusing for claimants, is there a better way to protect the privacy of claimants and the confidentiality of their personal information? In the event that SGI accepts our recommendation to eliminate the consent form it currently uses and substitutes a notice to claimants and providers that clearly identifies the purpose for the demand for personal information, **it must ensure that its claims staff understand that the personal information to be provided will be limited by the description of the purpose for the demand for personal health information.** In other words, if SGI claims staff receive personal information in response to their demand for information that is not relevant, they must immediately return that irrelevant information to the health provider who supplied it, or shred it. Such procedures should be available on the SGI website so they are transparent to all Saskatchewan residents.<sup>22</sup>

[emphasis added]

[46] SGI has not provided any supporting arguments or evidence to suggest it has considered the need-to-know or data minimization principles in this case.

[47] It is not clear why the SGI Personal Injury Representative requested the entire file for the specified timeframe.

---

<sup>20</sup>As referenced also in SK OIPC Investigation Reports F-2007-001, F-2009-001, H-2010-001, LA-2010-001, F-2012-005, H-2013-001, available at [www.oipc.sk.ca/reviews.htm](http://www.oipc.sk.ca/reviews.htm).

<sup>21</sup>*Supra* note at [66].

<sup>22</sup>*Supra* note 16 at [54].

- [48] My office has not received a copy of the SGI policy that was in effect at the time of this collection, despite requesting same in our notification letter to SGI dated November 25, 2010.
- [49] It is understood that information pertaining to the Complainant's neck and back would have a relevant role in the adjudication of the injury claim. This would not be in conflict with the need-to-know or data minimization principles.
- [50] However, how does the collection of personal health information such as that related to sexually transmitted diseases relate to a neck and back injury? SGI has not explained how this personal information was necessary for its purposes.
- [51] SGI has not demonstrated that the SGI Personal Injury Representative had a legitimate need-to-know the Complainant's entire history between January 1, 2004 and May 6, 2009.
- [52] Collecting the Complainant's entire file for the specified time period demonstrates a failure to limit the amount of data collected by SGI for its purpose, which is contrary to the data minimization principle.
- [53] By returning personal information that is over-collected only when it is at issue falls short of adequately addressing this issue. The personal information should not be over-collected in the first place and it should not be up to complainants to make issue of it before SGI will address it.
- [54] Therefore, I find that having collected any personal information not apparently relevant to the Complainant's neck and back injury constitutes an over-collection by SGI and offends the need-to-know and data minimization principles.
- [55] I do applaud SGI for returning the over-collected personal information to the Complainant, following the Complainant raising her concerns with SGI regarding its over-collection.

[56] However, SGI must take steps to address the over-collection in the first place in order to prevent future situations, such as this, from occurring again.

### **Outstanding OIPC Recommendations from Investigation Report F-2010-001**

[57] I wish to bring to SGI's attention the recommendations I made in my Investigation Report F-2010-001. Those recommendations are applicable in this case also as the issues are very similar. Those recommendations were as follows:

[74] That SGI ensure that it has policies and procedures that specifically reflect:

- the type of personal information that will be collected by Saskatchewan Government Insurance;
- why consent is not required for collection;
- the data minimization principle and how that is integrated into the work of Saskatchewan Government Insurance;
- the need-to-know principle and how that is followed in use by Saskatchewan Government Insurance and its staff; and
- the steps taken by Saskatchewan Government Insurance to limit the collection, use and disclosure of personal information of claimants consistent with the requirements of FOIP, HIPA and the Privacy Framework (save for provisions promoting consent).

[75] That those policies and procedures are published on SGI's website so they are available to all claimants and prospective claimants.

[76] That SGI revise its procedure for collection of personal information to ensure that it is not over-collecting the personal information of claimants. This revision should address how SGI will deal with excessive collection of personal information in any case where this is discovered.<sup>23</sup>

[58] With regards to these recommendations and Investigation Report F-2010-001, SGI responded on January 6, 2011, advising me that it would comply with some of my recommendations, but not all. SGI indicated it was reviewing its privacy related materials prepared for the public to ensure that the collection, use and disclosure of its

---

<sup>23</sup>*Supra* note 16 at [74] to [76].

customers' information and personal health information was addressed in a transparent manner and clearly reflected its information handling practices. SGI indicated that it already published a privacy statement on its website.

[59] In terms of my recommendation regarding SGI's excessive collection, it indicated that it currently engages a procedure that, when at issue, it will remove the information from its record and return the personal health information in question to the customer. However, this does not address the over-collection in the first place.

## **V FINDINGS**

[60] I find that all Parts of *The Freedom of Information and Protection of Privacy Act* apply to the personal information of the Complainant collected by Saskatchewan Government Insurance in this case.

[61] I find that there is personal information as defined by *The Freedom of Information and Protection of Privacy Act* involved in this case.

[62] I find that Saskatchewan Government Insurance has not abided by the need-to-know and data minimization principles in this case with respect to its over-collection of the Complainant's personal information.

## **VI RECOMMENDATIONS**

[63] I recommend that Saskatchewan Government Insurance update me on how it has changed its policies and procedures since January 2011 to specifically reflect:

- the type of personal information that will be collected by SGI;
- why consent is not required for collection;
- the data minimization principle and how that is integrated into the work of SGI beyond returning personal information when over-collected;

- the need-to-know principle and how that is followed in use by SGI and its staff;
- the steps taken by SGI to limit the collection, use and disclosure of personal information of claimants consistent with the requirements of *The Freedom of Information and Protection of Privacy Act*, *The Health Information Protection Act* and the Privacy Framework (save for provisions promoting consent) beyond returning personal information when over-collected; and
- the revised procedure for collection of personal information which prevents over-collection throughout the lifecycle of a claimants file with Saskatchewan Government Insurance.

Dated at Regina, in the Province of Saskatchewan, this 3rd day of September, 2013.

---

R. GARY DICKSON, Q.C.  
Saskatchewan Information and Privacy  
Commissioner