



REVIEW REPORT 010-2016

Saskatchewan Government Insurance

April 6, 2016

Summary: The Applicant requested that the Commissioner review the response of Saskatchewan Government Insurance (SGI) to his access to information request pertaining to information about his injury file. The Commissioner found that SGI appropriately applied subsections 22(b), 18(1)(f), 17(1)(b)(i) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). He also found that SGI performed a reasonable search for records.

I BACKGROUND

- [1] On December 10, 2015, Saskatchewan Government Insurance (SGI) received an access to information request from the Applicant that listed 10 types of documents pertaining to his injury file.
- [2] After clarifying the request with the Applicant, SGI responded on January 18, 2016. SGI provided some records and indicated that it was withholding certain information pursuant to subsections 15(1)(d), 17(1)(b)(i), 18(1)(f) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). It also indicated that records responsive to five items of his requested did not exist.
- [3] On January 26, 2016, my office received a request for a review of SGI's decision. On January 29, 2016, my office notified SGI and the Applicant of our intention to undertake a review.

II RECORDS AT ISSUE

[4] There are 15 pages of responsive records that have been denied to the Applicant as described in the table below. SGI applied subsection 22(b) of FOIP as an additional exemption.

Pages	SGI #	Description	Exemptions
1	P001	Summary for Appeal	15(1)(d), 17(1)(b)(i), 22(b)
2	P004	Screen Shot of O/S Reserve	18(1)(f)
3-13	P023-P028, P031-P035	E-mails	15(1)(d), 17(1)(b)(i), 18(1)(f)
14	P087	File Note, May 14, 2013	29(1)
15	P088	Motor Vehicle Accident Report Form	29(1)

[5] The Applicant has also asked my office to review SGI's claim that no further records exist.

III DISCUSSION OF THE ISSUES

1. Does subsection 22(b) of FOIP apply to the record?

[6] SGI has applied subsection 22(b) of FOIP to the first page of the record.

[7] Subsection 22(b) of FOIP states:

22 A head may refuse to give access to a record that:

...

(b) was prepared by or for an agent of the Attorney General for Saskatchewan or legal counsel for a government institution in relation to a matter involving the provision of advice or other services by the agent or legal counsel;

[8] In order for subsection 22(b) to apply, the following two part test must be met:

1. Was the record "prepared by or for" an agent or legal counsel for SGI?
2. Was the record provided in relation to a matter involving the provision of advice or other services by the agent or legal counsel?

[9] SGI has indicated that page one was “prepared for an SGI lawyer on a matter involving the provision of legal services in an anticipated litigation.” Both parts of the tests are met.

[10] Subsection 22(b) of FOIP applies to the first page.

2. Does subsection 18(1)(f) of FOIP apply to the record?

[11] Subsection 18(1)(f) of FOIP states:

18(1) A head may refuse to give access to a record that could reasonably be expected to disclose:

...

(f) information, the disclosure of which could reasonably be expected to prejudice the economic interest of the Government of Saskatchewan or a government institution;

[12] In order to qualify, the public body must show how the information is expected to prejudice economic interests. The public body does not have to prove that the prejudice is probable, but needs to show that there is a “reasonable expectation of prejudice” if any of the information/records were to be released.

[13] Prejudice in this context refers to detriment to economic interests. Economic interest refers to both the broad interests of a public body and for the government as a whole, in managing the production, distribution and consumption of goods and services. The term also covers financial matters such as the management of assets and liabilities by a public body and the public body’s ability to protect its own or the government’s interests in financial transactions.

[14] SGI severed information on the second page pursuant to subsection 18(1)(f) of FOIP. In its submission, it indicated that the information severed was a reserve and benefit amounts. SGI indicated that this information is not an accurate reflection of the actual value of the claim or the benefit amount and to release it would undermine SGI’s ability to negotiate fairly.

[15] I find that if released, the information would prejudice the economic interests of SGI. Therefore, SGI appropriately applied subsection 18(1)(f) of FOIP.

3. Does subsection 17(1)(b)(i) of FOIP apply to the record?

[16] Subsection 17(1)(b)(i) of FOIP states:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

[17] This provision is meant to permit government institutions to consider options and act without constant public scrutiny.

[18] SGI asserted in its submission that the records contained consultations. A consultation occurs when the views of one or more officers or employees of the public body are sought as to the appropriateness of a particular proposal or suggested action.

[19] In order to qualify, the opinions solicited during a “consultation” must:

1. be either sought, expected, or be part of the responsibility of the person who prepared the record; and
2. be prepared for the purpose of doing something, such as taking an action, making a decision or a choice.

[20] SGI applied subsection 17(1)(b)(i) of FOIP to portions of the e-mails on pages 3-13 of the record. In its submission, SGI explained the nature of the e-mails and the consultations occurring in them. In addition, it clarified the roles of the employees involved.

[21] From a review of the documents, it is clear that there are discussions going back and forth between SGI employees including those responsible for making decisions regarding the claim.

[22] I find that the information constitutes consultations. Further, I find that the purpose for the consultations was to make decisions regarding the claim. It was also part of the responsibilities of the employees involved. Therefore, I find that SGI appropriately applied subsection 17(1)(b)(i) of FOIP to the e-mails.

4. Does subsection 29(1) of FOIP apply to the record?

[23] SGI applied subsection 29(1) of FOIP to portions of the last two pages of the record.

[24] When dealing with information in a record that appears to be personal information, the first step is to confirm the information indeed qualifies as personal information pursuant to section 24 of FOIP. Once identified as personal information, a decision needs to be made as to whether to release it or not pursuant to section 29 of FOIP.

[25] In its submission, SGI indicated that the severed information on page 14 was information about SGI's decision regarding another individual's claim. On page 15, SGI has indicated it has severed another individual's driver's license number, birth date and address. These data elements constitute personal information pursuant to subsections 24(1)(a), (d), (e) and (k)(i) of FOIP.

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:

(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;

...

(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;

...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual;

...

[26] 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 relates except in accordance with this section or section 30.

[27] As the information constitutes personal information, I find that SGI appropriately applied subsection 29(1) of FOIP to the records in question.

5. Did SGI conduct a reasonable search?

[28] Section 5 of FOIP provides the right of access as follows:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a government institution.

[29] Section 5 is clear that access can be granted provided the records are in the possession or under the control of the government institution. FOIP does not require a government institution to prove with absolute certainty that records do not exist. It must however, demonstrate that it has made a reasonable effort to identify and locate responsive records.

[30] A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request. The threshold that must be met is one of “reasonableness”. In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable.

[31] The level of detail that can be provided to my office is outlined in my office's resource, IPC Guide to Exemptions. Each case requires different search strategies and details depending on the nature of the records and the way an organization manages them.

[32] SGI has indicated that there are no additional records responsive to the following requests by the Applicant:

1. Correspondence between "Doctor A" and "Doctor B";
2. Correspondence between "Doctor B" and "Doctor C";
3. A "definition of the various degrees of impact that SGI uses to assess how severe a collision is";
4. Vehicle repair records and damage reports of another individual; and
5. Any voice recordings associated with the Applicant's injury file.

[33] With respect to items one and two, SGI's submission indicated that it has either provided the Applicant with all medical related records to the Applicant, or it has been addressed earlier in this Report. SGI reported that information regarding a claim is filed, in paper or electronic files, by name and date of loss. Both the Claims Unit and Legal Department have access to these files. All responsive records from that file has been disclosed to the Applicant or addressed in this file and no further records exist. SGI also searched another Unit that retains medical information, but is not related to the Applicant's case. This is the Medical Review Unit which assesses the regulation of driver licences when there is a medical concern. No records were found. I am persuaded that SGI has performed a reasonable search for records responsive to items one and two.

[34] SGI's submission has also indicated that records responsive to item three do not exist. It indicated that the Manager of the Claims Department advised that such a document does not exist. It asserts that such a document would only be relevant when there is a "causation issue". In these cases, SGI relies instead on the expert advice of medical practitioners or an accident deconstructionist to determine the seriousness of the collision. SGI's Chief Privacy and Access Officer, and a member of the legal department, wrote SGI's submission and also confirmed that such a document did not exist. I am persuaded that SGI performed a reasonable search for records responsive to item three.

[35] The fourth item was a request for material related to the vehicle of another individual. SGI reported that information regarding a claim is filed, in paper or electronic files, by name and date of loss. When searched, there were no responsive records in the relevant files. With these facts in mind, I am satisfied that SGI performed a reasonable search for records responsive to item four.

[36] Finally, with respect to item five, SGI's submission indicated that any audio recordings would be held in the Applicant's electronic claim file. The claim file was searched and SGI reported that no audio recordings exist. I am persuaded that SGI has performed a reasonable search.

IV FINDINGS

[37] I find that SGI properly applied subsections 22(b), 18(1)(f), 17(1)(b)(i) and 29(1) of FOIP to the record.

[38] I find that SGI has performed a reasonable search for records.

V RECOMMENDATION

[39] I recommend that SGI take no further action.

Dated at Regina, in the Province of Saskatchewan, this 6th day of April, 2016.

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