



## **REVIEW REPORT 018-2016**

### **Saskatchewan Government Insurance**

**May 5, 2016**

**Summary:**

The Applicant made an access to information request to Saskatchewan Government Insurance (SGI) for information related to her injury file. SGI withheld portions pursuant to subsections 17(1)(b)(i), 18(1)(f) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner found that subsections 18(1)(f) and 29(1) of FOIP applied to the record; however subsection 17(1)(b)(i) did not. He also found that SGI performed a reasonable search for records.

### **I BACKGROUND**

- [1] On December 17, 2015, Saskatchewan Government Insurance (SGI) received an access request from the Applicant for certain information related to her injury file. On January 15, 2016, SGI responded by providing the Applicant with certain records. It also indicated that it was withholding portions of the record pursuant to subsections 17(1)(b)(i), 18(1)(f) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). SGI also informed the Applicant that audio files, video files or photographs responsive to her request did not exist.
- [2] On February 9, 2016, the Applicant requested a review by my office. She requested a review of the exemptions applied and the claim that certain records did not exist.
- [3] On February 10, 2016, our office notified SGI and the Applicant of our intention to undertake a review.

## II RECORDS AT ISSUE

[4] SGI has severed portions of 28 pages and withheld one in its entirety as described in the table below.

Pages	SGI #	Description	Exemptions
1-8	P002, P004, P010, P011, P020, P023, P026, P027	Injury claim summary sheet Note: The summary sheet is 42 pages, however only 8 pages are at issue in this review	18(1)(f), 29(1)
9-10	P112, P134	Request for Review by SGI Consultant	17(1)(b)(i)
11	P165	Handwritten sign-in sheet	29(1)
12	P182	Cheque Image (Withheld in full)	29(1)
13-20	P185, P188, P191, P194, P196-P198, P201	Portions of e-mails	29(1)
21	P206	File note	29(1)
22-23	P224, P225	Request for Review by SGI Consultant	17(1)(b)(i)
24	P291	Injury claim summary sheet	18(1)(f)
25	P313	Request for Review by SGI Consultant	17(1)(b)(i)
26	P400	Portion of Credit Card Statement	29(1)
27	P606	Portion of Income Replacement Benefit Note	29(1)
28-29	P622, P623	Portions of e-mails	17(1)(b), 29(1)

## III DISCUSSION OF THE ISSUES

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

[5] 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;

[6] 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.

[7] 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.

[8] SGI severed information on three pages of the record (pages 1, 6, 24) pursuant to subsection 18(1)(f) of FOIP. In its submission, it indicated that the information severed on page 1 and 24 are 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. I find that if released, the information could reasonably prejudice the economic interests of SGI.

[9] On page 6, SGI severed an account number for a physician. It submitted that it would not disclose the account number to protect itself from fraud. I find that if released, the information could reasonably prejudice the economic interests of SGI.

[10] Therefore, SGI appropriately applied subsection 18(1)(f) of FOIP.

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

[11] 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;

- [12] This provision is meant to permit government institutions to consider options and act without constant public scrutiny.
- [13] 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. A deliberation is a discussion or consideration, by the persons described in the section, of the reasons for and against an action. It refers to discussions conducted with a view towards making a decision.
- [14] 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.
- [15] SGI applied subsection 17(1)(b)(i) of FOIP to portions of the requests for review by SGI Consultants and portions of the e-mails (pages 9, 10, 22, 23, 25 and 28).
- [16] With respect to the first five pages, SGI explained that these requests for review by SGI Consultants are sent to medical consultants for an opinion. SGI redacted questions for the consultant that the Personal Injury Representative “feels is critical or of concern”. Upon review of the record, SGI only severed the questions posed to the consultant. The response from the consultant is not included in these redactions.
- [17] This exemption does not generally apply to records or parts of records that in themselves reveal any of the following: that a consultation or deliberation took place; that particular persons were involved; that a particular topic was involved or that the consultation or deliberation took place at a particular time.
- [18] Without the views of the consultant in reply to these questions, this does not qualify as a consultation or a deliberation. Subsection 17(1)(b)(i) of FOIP does not apply.

[19] Upon review of page 28 of the record, subsection 17(1)(b)(i) of FOIP does not apply. SGI explained that the severed portion is an e-mail “explaining the [Applicant’s] concerns and recommending a course of action.” The severed portion is an e-mail from a Manager giving a directive to an employee. Again, there is no back and forth between the Manager and the employee. As such, it does not qualify as a consultation or deliberation.

[20] Therefore, I find that subsection 17(1)(b)(i) of FOIP does not apply to the record. SGI has already released these portions to the Applicant.

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

[21] SGI applied subsection 29(1) of FOIP to many portions of the record.

[22] 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.

[23] Upon review of the record, the severed portions include e-mail addresses, telephone numbers, education and employment history and financial information of individuals who are not the Applicant. All of this information would qualify as personal information pursuant to subsection 24(1) of FOIP which states:

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;

(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;

...

(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;

...

[24] 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.

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

#### **4. Did SGI conduct a reasonable search?**

[26] 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.

[27] 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.

- [28] 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.
- [29] 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.
- [30] The Applicant also requested any surveillance video, audio files and photographs relating to her file. In its section 7 response to the Applicant, SGI indicated that those types of records did not exist. The Applicant requested that we review this matter as well.
- [31] In its submission, SGI explained that these types of records would be held either on the Applicant’s injury file or in specific files related to the Applicant’s injury in the Legal Department or in its Special Investigation Unit. SGI searched both the paper and electronic versions of the Applicant’s injury file and no responsive records were found. SGI indicated that there was no file related to the Applicant’s injury in the Legal Department or the Special Investigations Unit.
- [32] I am persuaded that SGI has performed a reasonable search.

#### **IV FINDINGS**

- [33] I find that SGI properly applied subsections 18(1)(f) and 29(1) of FOIP to the record.
- [34] I find that SGI did not properly apply subsection 17(1)(b)(i) to the record.
- [35] I find that SGI has performed a reasonable search for records.

**V RECOMMENDATION**

[36] I recommend that SGI release pages 9, 10, 22, 23, 25 and 28 of the record in their entirety to the Applicant, with the exception of the personal information of another individual found on page 28.

Dated at Regina, in the Province of Saskatchewan, this 5th day of May, 2016.

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