



REVIEW REPORT 064-2018

Saskatchewan Government Insurance

November 6, 2018

Summary: The Applicant requested a number of records from Saskatchewan Government Insurance (SGI). SGI provided a response to the Applicant indicating that records did not exist. The Applicant requested a review by the Office of the Information and Privacy Commissioner (IPC). Upon review, the Commissioner found that the search conducted by SGI was reasonable and adequate for purposes of FOIP. The Commissioner recommended that SGI take no further action.

I BACKGROUND

[1] On February 12, 2018, Saskatchewan Government Insurance (SGI) received an access to information request from the Applicant. The request was six pages long consisting of a cover page, one access to information request form and a four-page letter. The access to information request pointed to the four-page letter. The four page letter included a request for the following:

“I AM REQUESTING ANY & ALL:

RECORDS PERTAINING TO SGI SURVEILLANCE OF MYSELF (name of applicant removed),

- 1) **OF MY PROPERTY, & TAIL GATING ME FROM ASSINIBOIA COOP TO LIMERICK.**
- 2) **AT THE TEMPLE GARDENS/CASINO PARKING LOT ON AUG. 31 2015, TO WHICH I HAVE A WITNESS WHO INTERVENED & WILL TESTIFY TO THE AIAC.**

I AM REQUESTING ANY & ALL RECORDS PERTAINING TO:

- A) **CONTRACTS OF SURVEILLANCE**
- B) **PAYMENTS OFOR SERVICES RENDERED**
- C) **FINANCIAL REIMBURSEMENT**
(EITHER PAY/PAYROLL OR EXPENSES BILLED BY SPIES, OR
THEIR OFF SITE OFFICES, SUCH AS FUEL OR MILEAGE &
MEALS) ON ASSIGNMENTS TO SURVEIL ME.

...

I AM REQUESTING ANY & ALL

- A) **PAYROLL FOR SURVEILLANCE**
- 1) **CONTRACTS FOR SURVEILLANCE**

EITHER FOR SPECIFIC SGI CLIENT TARGETED BASIS THAT WOULD
BE ME (Name of Applicant removed)

- 2) **OR GENERAL CONTRACT/ARRANGEMENT WITH OUTSIDE**
AGENCIES TO PROVIDE SERVICES OF SURVEILLANCE.
- 3) **CHECK THE BOOKS...SEE WHO PAID WHO...THAT'S WHAT I**
WANT TO KNOW!!

I AM REQUESTING ANY & ALL

- B) **MEDIA SURVEILLANCE**
- 1) **VIDEO, PHOTOS, AUDIO, ON CELL PHONE OR ANY & ALL**
OTHER SURVEILLANCE MEDIUMS (DASH CAMS ETC.)
- 2) **WRITTEN REPORTS PERTIANING TO OR CONNECTED IN ANY**
MANNER TO ME & MY FILE
- 3)
- C) **ANY & ALL OF SURVEILLANCE ASSIGNMENTS**

I REQUEST YOU SEARCH BOTH ON & OFF SITE WITH DUE
DILLIGENCE.

SEARCH 2

I REQUEST ANY & ALL RECORDS OF FINANCIAL RENUMERATION
PAID TO SGI LAWYERS ON MY CASE FILE. I REQUESTED THIS
INFORMATION IN DEC 2015...

[2] By letter dated February 14, 2018, SGI provided an acknowledgement of receipt of the Applicant's access to information request and sought clarification from the Applicant.

According to SGI, no response indicating SGI interpreted the access to information request incorrectly was received from the Applicant.

[3] By letter dated March 7, 2018, SGI provided its response to the Applicant in which it broke down the Applicant's access to information request and provided SGI's response to each part. In summary, it advised the Applicant that records did not exist pursuant to subsection 7(2)(e) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[4] On April 3, 2018, my office received a Request for Review from the Applicant. The Request for Review included a cover page, which stated the Applicant was requesting a review of SGI's denial that it surveilled the Applicant. The Applicant asserted SGI's statements were "lies".

[5] On April 9, 2018, my office notified SGI and the Applicant of my office's intent to undertake a review and invited all parties to provide submissions.

[6] On April 20, 2018, SGI provided my office with its submission detailing its search efforts.

II RECORDS AT ISSUE

[7] There are no records at issue in this review. SGI asserted no records exist.

III DISCUSSION OF THE ISSUES

1. Does my office have jurisdiction?

[8] SGI is a "government institution" pursuant to subsection 2(1)(d)(ii) of FOIP. Thus, I have jurisdiction to conduct this review.

2. Did SGI conduct an adequate search?

[9] Section 5 of FOIP provides an applicant the right of access to records in the possession or under the control of a government institution. Section 5 provides:

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.

[10] However, a government institution cannot provide access to records that do not exist. Subsection 7(2)(e) of FOIP contemplates such situations. This provision provides:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

...

(e) stating that access is refused for the reason that the record does not exist;

[11] FOIP does not require a government institution to prove with absolute certainty that records responsive to an access to information request do not exist. It must, however, demonstrate that it has conducted a reasonable search to locate them.

[12] A *reasonable search* is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.

[13] When conducting a review of a government institution's search efforts, details are requested that help my office understand the level of effort made to locate the records. The submission to my office should outline the search strategy conducted which can include:

- For personal information requests – explain how the individual is involved with the public body (i.e. client, employee, former employee etc.) and why certain departments/divisions/branches were included in the search.

- For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.
- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search:
 - Describe how records are classified within the records management system. For example, are the records classified by:
 - alphabet
 - year
 - function
 - subject

Consider providing a copy of your organizations record schedule and screen shots of the electronic directory (folders & subfolders).

If the record has been destroyed, provide copies of record schedules and/or destruction certificates.

- Explain how you have considered records stored off-site.
- Explain how records that may be in the possession of a third party but in the public body’s control have been searched such as a contractor or information service provider.
- Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
- Which folders within the records management system were searched and explain how these folders link back to the subject matter requested?
 - For electronic folders – indicate what key terms were used to search if applicable.
- On what dates did each employee search?
- How long did the search take for each employee?
- What were the results of each employee’s search?
 - Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see the IPC resource, *Using Affidavits in a Review with the IPC* available on our website.

[14] The above list is a guide. Each case will require different search strategies and details depending on the records requested and circumstances of the case.

[15] The Applicant has requested two types of records – records related to surveillance and records related to lawyers’ fees. In its submission, SGI addressed each type of record. After reviewing SGI’s submission, the following details can be summarized regarding surveillance records:

- SGI contacted the Director of Analytics and Investigations at SGI. The Director manages all special investigators hired by SGI and is responsible for all programming or work product that is attributable to that office;
- The Director advised that since the mid 1990’s every investigation conducted by the Special Investigation Unit is located on an electronic file. Only materials that cannot be stored electronically (such as large-resolution photos) are kept in a corresponding physical file. If this occurs, it is also indicated on the electronic file. In other words, it is not possible for physical file materials to exist without a ‘master’ electronic counterpart;
- The Director confirmed that records related to surveillance conducted by the Special Investigation Unit would not be kept in any other location. It is the only unit at SGI tasked with conducting surveillance;
- The Director conducted an examination of SGI’s electronic records and advised that the search returned no records for the Applicant; and
- SGI added further that for general surveillance contracts of any kind, the Director confirmed that there were no standing contracts or agreements for surveillance services. SGI also searched its legal department and no standing contracts or agreements for surveillance services were found.

[16] For the request for records related to lawyer fees, SGI provided search details. After reviewing SGI’s submission, the following detail can be summarized about records related to lawyer’s fees:

- The Applicant is a recipient of Part VIII injury benefits under *The Automobile Accident Insurance Act*. The Applicant is involved in a dispute with SGI concerning her entitlement to benefits and has initiated an appeal to the Automobile Injury Appeal Commission. In consequence, SGI’s legal staff have been involved in the resolution of her file.

- SGI is unable to attribute a percentage of any lawyer's salary towards the adjudication of the Applicant's file. No time records for legal work are maintained by SGI. SGI lawyers are salaried employees and their annual salary is published in the Crown Payee Disclosure Report. SGI provided the Applicant with the website address so she could access this information. As such, there are no other records.

[17] In SGI's response to the Applicant it indicated that:

SGI lawyers are salaried employees and do not record billable hours on any work product. A breakdown of how much a lawyer was specifically paid on your file is not available. The Crown Investments Corporation of Saskatchewan annually publishes a Payee Disclosure Report which lists employees whose remuneration totals at least \$50,000 for the reporting year. This publication can be accessed on the Government of Saskatchewan website. www.publications.gov.sk.ca...

[18] As noted earlier, a government institution does not have to prove with absolute certainty that records responsive to an access to information request do not exist. It must, however, demonstrate that it has conducted a reasonable search to locate them.

[19] Based on what has been provided to my office, I find that SGI has demonstrated that its search for records was adequate for purposes of FOIP.

IV FINDING

[20] I find that the search conducted by SGI was adequate for purposes of FOIP.

V RECOMMENDATION

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

Dated at Regina, in the Province of Saskatchewan, this 6th day of November, 2018.

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