



REVIEW REPORT 104-2017

Saskatchewan Government Insurance

September 26, 2017

Summary: The Applicant submitted an access to information request under *The Freedom of Information and Protection of Privacy Act* (FOIP) to Saskatchewan Government Insurance (SGI). SGI responded by indicating it would provide the Applicant some but not all of the records. It cited subsections 15(1)(d), 17(1)(b)(i), 18(1)(f), and 29(1) of FOIP as its reasons for withholding portions of the records. Portions of some of the records were also marked as “non-responsive” to the Applicant’s request. The Applicant appealed to the Information and Privacy Commissioner (IPC). The IPC made a number of recommendations including that SGI disclose to the Applicant many of the portions of records that it withheld from the Applicant.

I BACKGROUND

[1] On October 28, 2016, Saskatchewan Government Insurance (SGI) received the following access to information request:

August 8th, 2014 to present all and any documentation, notes & any & all other submissions concerning claim # RG SK 003209112. We also request all documentation notes and all other submissions to said claim # of phone conversations pertaining re claim #RG SK 003209112 and/or the insured: [Name of insured] [Name of insured].

[2] In a letter dated November 23, 2016, SGI responded to the Applicant. It was providing the Applicant some but not all the records. It cited 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) as its reasons for withholding portions of the records.

[3] On May 23, 2017, the Applicant requested a review by my office.

[4] On March 25, 2017, my office notified both the Applicant and SGI that it would be undertaking a review.

II RECORDS AT ISSUE

[5] SGI paginated its records and numbered each of its redactions. It created an index of the records that were withheld in part or in full. SGI enclosed a copy of this index of redacted records to the Applicant with its letter dated November 23, 2016.

[6] The records at issue are records from the Applicant's claim file. A description of the records, including page numbers and the redaction numbers, is within the analysis of this report.

III DISCUSSION OF THE ISSUES

[7] SGI is a "government institution" as defined by subsection 2(1)(d) of FOIP.

1. Did SGI properly apply subsection 15(1)(d) of FOIP?

[8] SGI applied subsection 15(1)(d) of FOIP to page P052, P054, P206 and P207.

[9] Subsection 15(1)(d) of FOIP provides as follows:

15(1) A head may refuse to give access to a record, the release of which could:

...

(d) be injurious to the Government of Saskatchewan or a government institution in the conduct of existing or anticipated legal proceedings;

[10] In order for subsection 15(1)(d) of FOIP to apply, the following test must be met:

1. Do the proceedings qualify as existing or anticipated legal proceedings?

2. Could disclosure of the records be injurious to the public body in the conduct of the legal proceedings?

[11] The portion on page P052 that was withheld is labelled as redaction #9 by SGI. It is the body of an internal email. In its submission, SGI indicated that any coverage issues on this claims file may still be addressed through litigation but it did not explain how the disclosure of this particular internal email would be injurious to SGI. I find that SGI has not demonstrated that subsection 15(1)(d) of FOIP applies to redaction #9.

[12] The portion on page P054 that was withheld is labelled as redaction #11 by SGI. It is two emails by a Director in the General Claims Division to an adjustor. Again, in its submission, SGI indicated that any coverage issues on this claims file may still be addressed through litigation but it did not explain how the disclosure of this particular email would be injurious to SGI. I find that SGI has not demonstrated how subsection 15(1)(d) of FOIP applies to redaction #11.

[13] Pages P206 and P207 were withheld in their entirety. It is a document entitled "Decision Request". Similar to my analysis above, SGI indicated that any coverage issues may still be addressed through litigation but SGI does not explain how the disclosure of this particular document would be injurious to SGI. I find that SGI has not demonstrated that subsection 15(1)(d) of FOIP applies to pages P206 and P207.

2. Did SGI properly apply subsection 17(1)(b)(i) of FOIP?

[14] SGI applied subsection 17(1)(b)(i) of FOIP to pages P018, P024, P043, P044, P052, P054, P206, P207, and P209.

[15] Subsection 17(1)(b)(i) of FOIP provides as follows:

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;

- [16] 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.
- [17] 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.
- [18] In order to qualify, the opinions solicited during a consultation or deliberation must:
- i. be either sought, expected, or be part of the responsibility of the person who prepared the record; and
 - ii. be prepared for the purpose of doing something, such as taking an action, making a decision or a choice.
- [19] The portion on page P018 that was withheld is labelled as redaction #3 by SGI. It is an email exchange between the Director General Claim, Adjuster III and an Adjuster I. In its submission, SGI states that the Adjuster I would be following instructions provided by the Director General Claim and Adjuster III. Based on a review of the email exchange, I find that the Adjuster III provided instructions to the Adjuster I and the Director General Claim agrees with the instruction. I find that providing instructions to an employee does not qualify as a consultation or deliberation. Therefore, I find that subsection 17(1)(b)(i) of FOIP does not apply.
- [20] The portion on page P024 that was withheld is labelled as redaction #4 by SGI. It is a duplicate of the email exchange that appears on page P018 except it does not have the email by the Director General Claims. Since I already found that subsection 17(1)(b)(i) of FOIP does not apply to redaction #3 on page P018, I find that subsection 17(1)(b)(i) of FOIP does not apply to redaction #4 on page P024.
- [21] The portions on page P043 that were withheld are labelled as redactions #5A, #5B, and #5C. In its submission, SGI indicated that the portions being withheld is a discussion regarding the handling of the claim between Adjuster I and Adjuster III, and that Adjuster I would be following instructions provided by Adjuster III. Based on a review of the discussion, Adjuster III is providing instructions to Adjuster I and the reason for the

instruction. I find that providing instructions to an employee does not qualify as a consultation or deliberation. Therefore, I find that subsection 17(1)(b)(i) of FOIP does not apply.

[22] The portions on page P044 that were withheld are labelled as redactions #7 and #8. Redaction #7 is an email chain between management staff regarding the status of the claim and payment for invoice. In its submission, SGI indicated that the email chain is discussions between management and staff which would result in a course of action. Based on a review of the email chain, the discussion does not qualify as a consultation or deliberation. There is no seeking of views or opinions regarding the appropriateness of a suggested action nor are there reasons for or against an action. I find that subsection 17(1)(b)(i) of FOIP does not apply.

[23] Redaction #8 on page P044 is a notation made to the claim file by a Claims Director. In its submission, SGI indicated this notation reflects discussions with staff and instructions on how SGI will proceed to adjudicate the claim. Based on a review of the record, I find that there are no consultations or deliberations in this notation. The notation is a decision that may have resulted from consultation or deliberations but it is not the consultation or deliberation. I find that subsection 17(1)(b)(i) of FOIP does not apply.

[24] The portions on page P052 that was withheld are labelled as redactions #9 and #10. Redaction #9 is the body of an internal email. In its submission, SGI describes this redaction as a memo to staff adjuster regarding how the adjuster should adjudicate the claim from senior management. Based on a review of this redaction, I find that the contents of the email do not qualify as a consultation or deliberation. The contents appear to be instructions to the adjuster by a director. I find that subsection 17(1)(b)(i) of FOIP does not apply.

[25] Redaction #10 on page P052 is a notation by a Claims Director. In its submission, SGI indicated the notation is about discussions with staff and instructions on how SGI will proceed to adjudicate the claim. Based on a review of the record, I find that there are no consultations or deliberations in the notation. I find that subsection 17(1)(b)(i) of FOIP does not apply.

- [26] The portion on page P054 that was withheld is labelled as redaction #11. It is two emails by a Director in the General Claims Division to an adjuster. In its submission, SGI describes this record as a memo to the staff adjuster regarding how the adjuster should adjudicate the claim from senior management. Based on a review of the record, I find that the contents do not qualify as a consultation or deliberation. The contents are facts and instructions to an employee on how to adjudicate the claim. Therefore, I find that subsection 17(1)(b)(i) of FOIP does not apply.
- [27] Pages P206 and P207 were withheld in their entirety. It is a document entitled “Decision Request”. In its submission, SGI describes this record as a memo to the staff adjuster regarding how that adjuster should adjudicate the claim from senior management. A review of the record reveals there is a correspondence between an adjuster, an Adjuster III and a manager.
- [28] First, the correspondence by the adjuster on page P206 contains mostly facts. He then offers his opinion about a particular course of action and seeks the permission from Adjuster III for the particular course of action. I find that subsection 17(1)(b)(i) of FOIP applies only to the opinion and the seeking of permission for the particular course of action. It does not apply to the facts since subsection 17(1)(b)(i) of FOIP is not meant to protect the bare recitation of facts.
- [29] Second, the correspondence by the Adjuster III on pages P206 and P207 is factual. He does not offer reasons for or against any particular course of action. I find that subsection 17(1)(b)(i) of FOIP does not apply to the correspondence by Adjuster III.
- [30] Third, the correspondence by the manager on page P207 is factual. She makes a decision about what course of action to take. I find that it is not a consultation or deliberation. Therefore, subsection 17(1)(b)(i) of FOIP does not apply to the correspondence by the manager.
- [31] The portion on page P209 that was withheld is labelled as redaction #15. In its submission, SGI describes this redaction as a recommendation from an adjuster to the

underwriter and that underwriter would consider the recommendation for a future course of action (but a course of action not related to the Applicant's claim). Based on a review of the redaction, I find that subsection 17(1)(b)(i) of FOIP does not apply. The reason for this finding is because while the contents contain a recommendation by an adjuster for a particular course of action for the future (i.e. not regarding the Applicant's insurance claims at that time), SGI has not demonstrated how it is within the adjuster's responsibilities to make such a recommendation.

3. Did SGI properly apply subsection 18(1)(f) of FOIP?

[32] SGI applied subsection 18(1)(f) of FOIP to pages P002 and P208.

[33] Subsection 18(1)(f) of FOIP provides as follows:

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;

[34] In order for subsection 18(1)(f) of FOIP to apply, the government institution must have objective grounds for believing that disclosing the information would result in prejudice. The government institution does not have to prove that prejudice is probable but needs to show there is a reasonable expectation of prejudice if the information in the record was to be released.

[35] Prejudice in this context refers to detriment to economic interests. Economic interests refer to both the broad interests of a government institution 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 government institution and the government institution's ability to protect its own or the government's interests in financial transactions.

[36] On pages P002 and P208, SGI severed the reserving information. In its submission, SGI explained that the reserving information is the process by which all insurance companies value the potential liability of a claim and track expenditures. Reserving is a reflection of the possible (not actual) value of the claim either at the time the reserve is established or periodically reviewed. SGI explained that such information is never released to a customer as it is often not an accurate reflection of the value of the claim and the release of this information has the potential to undermine SGI's ability to negotiate fairly with the customer as a customer may not settle a claim or accept a benefit amount for a fair value if the reserve indications are higher. I find that the release of such information could reasonably prejudice the economic interests of SGI. I find that subsection 18(1)(f) of FOIP applies to the reserving information on pages P002 and P208.

4. Did SGI properly apply subsection 29(1) of FOIP?

[37] SGI applied subsection 29(1) of FOIP to page P043.

[38] Subsection 29(1) of FOIP provides as follows:

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.

[39] In order for subsection 29(1) of FOIP to apply, the information in a record must qualify as personal information as defined by subsection 24(1) of FOIP.

[40] The portion on page P043 that was withheld is labelled as redaction #6 by SGI. It is a list of claim numbers and the last name of the claimants. In its submission, SGI states that this information qualifies as personal information of other customers with claims. Based on a review of the information, I find that this information qualifies as personal information of other customers as defined by subsection 24(1)(k)(i) of FOIP, which provides:

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:

...

(k) the name of the individual where:

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

[41] I find that SGI properly applied subsection 29(1) of FOIP.

5. Is information on pages P007 and P202 non-responsive to the Applicant’s access to information request?

[42] SGI claimed information from pages P007 and P202 as non-responsive to the Applicant’s request.

[43] A government institution can sever information as non-responsive if the Applicant has requested specific information, such as his or her own personal information. The government institution may treat portions of a record as non-responsive if they are clearly separate and distinct and not reasonably related to the access to information request.

[44] In its submission, SGI states that the Applicant had sought information concerning his claim and the information marked as non-responsive has nothing to do with the adjudication of the Applicant’s claim.

[45] In his submission, the Applicant indicated his concern is that there are derogatory, slanderous and unwarranted remarks. For example, on page P007, the information that was released to him was an email by him to an SGI employee (employee #1). Then, employee #1 forwards the email internally to another SGI employee (employee #2). In the forwarded email, the employee #1 states “Guess who [sic] emailing again”. In response, employee #2 responds “Sorry – its [sic] next on my life after [redacted]”.

[46] Based on a review of the redactions on pages P007 and P202 by my office, it appears the redacted information is separate and distinct and not related to the Applicant’s claim. In other words, I find that the information is non-responsive. It also does not appear to be

derogatory, slanderous or unwarranted remarks. However, I understand the Applicant's concern.

[47] In a blog dated July 14, 2017 by the Commissioner, he encourages public bodies to release non-responsive portions of records because unnecessary severing causes applicants to be suspicious that something is being hidden. He says:

I suggest best practice is to provide the non-responsive information to the applicant (subject to exemptions). Alternatively, the public body might choose to sever the non-responsive information but that strikes me as a waste of time. Unnecessary severing causes applicants to be suspicious that something is being hidden. An applicant could submit a second access request for the severed non-responsive portions and the public body would have to provide it (subject to exemptions). So this blog is written just to encourage public bodies to release non-responsive portions of records (as always, subject to exemptions).

[48] Although the information is non-responsive, I recommend that SGI disclose the non-responsive information.

6. Did SGI demonstrate it made a reasonable effort to search for records?

[49] The Applicant believes that not all records pertaining to his claim were provided to him. The basis for his belief is as follows:

- In his undated letter received by my office on May 26, 2017, the Applicant indicates that he did not receive any and all handwritten information from notes in file such as meeting notes.
- In his letter dated May 23, 2017 to my office, the Applicant highlighted that there was a notation on page P055 where an SGI employee notated "Est in attachment #6". The Applicant says he never received any attachments.
- In his letter dated May 23, 2017 to my office, the Applicant indicated he never received pages 206 and 207, "other documents" and phone calls.
- In his undated letter received by my office on May 26, 2017, the Applicant expressed his frustration over SGI's narrow interpretation of his access request.

[50] I will now proceed to analyze the above four points.

[51] First, to address the Applicant's concern that there are no handwritten records such as meeting notes, SGI indicated there are no physical records because the Applicant's claim

file is paperless. To support its claim, it provided my office with a copy of page P001 (which was also provided to the Applicant) which indicates that the Applicant's claim file is a paperless file stored in its GIS database. Based on a review of the records provided to my office, I find that a variety of records are stored in the GIS database, including emails, notations about meetings and discussions, MP3 recordings of telephone calls and documents that are scanned and stored in the database. It is conceivable that no handwritten records exist. In this day and age, many organizations (including mine) have electronic filing systems instead of physical records.

[52] Second, to address the concern that the Applicant did not receive any attachments (including "attachment #6" that is referenced on page P055), SGI provided my office with a screenshot of the attachments that are in the Applicant's claim file. The screenshot lists attachment #6 as scanned document described as "Pro-Fit Ext – estimate for siding". To demonstrate that attachments were provided to the Applicant, SGI provided my office with a copy of attachment #6. Based on a review of attachment #6, I note that this record was paginated as pages P194 to P197 and was provided to the Applicant. Based on this, I am satisfied that SGI has provided attachments on the file to the Applicant. However, I note that it would have been difficult for the Applicant to know that the attachment referenced on page P055 is on pages P194 to P197. I recommend that SGI provide the Applicant with a copy of the screenshot that lists all the attachments on his claim file. This would enable the Applicant to know what attachments are on his file.

[53] Third, to support his claim that SGI did not provide him with all records related to his claim, the Applicant said he did not receive pages P206 and P207, "other documents" and phone calls. I find that pages P206 and P207 were not provided to the Applicant because they were withheld in their entirety by SGI pursuant to subsections 15(1)(d) and 17(1)(b)(i) of FOIP, and not because SGI did not conduct a reasonable search for records. In terms of recordings of telephone calls, on May 25, 2017, the Applicant had clarified with an Early Resolution Officer (ERO) at my office that he had believed he did not receive a recording of a telephone conversation that took place between him and an SGI employee on February 10, 2015. However, after reviewing recordings provided to him by

SGI, the Applicant indicated to my office he did indeed received the recording of that particular telephone call.

[54] Fourth, the Applicant expressed his frustration with SGI's narrow interpretation of his access to information request. The Applicant sought all records related to his claim but SGI had only searched its GIS database for responsive records. Based on a telephone call between my office and SGI on May 25, 2017, SGI indicated that the Applicant's request did not capture records from its Fair Practice Office (FPO) because the Applicant only sought records under his claim number. However, the Applicant indicated he had approached and interacted with the FPO regarding his claim but he did not receive records by the FPO regarding his claim. SGI's website describes the FPO as follows:

FPO specialists are mandated to receive, investigate and, to the extent possible, resolve inquiries and/or complaints about SGI claim settlements, products, programs and processes. Our specialists strive to ensure SGI decisions are reached fairly, and that they are consistent with the provisions of legislation and regulations applicable to SGI.

[55] In his letter dated May 26, 2017 to my office, the Applicant asserted that it is unreasonable for the average person to understand that requesting all records related to his claim file would not include all records related to his claim from all SGI departments. I agree with the Applicant. Based on the wording of the access to information request, it is evident that the Applicant sought all records in the possession or control of SGI that are related to his claim, not just records stored in the GIS database. If there is any question as to what the Applicant is seeking, my office has taken the position that there is an implied duty on the part of the government institution to take reasonable steps to ensure that it respond to access to information requests openly, accurately and completely. This includes contacting the Applicant to clarify what he is seeking. Most individuals will not have a sophisticated understanding of what records a government institution may have and how the records are organized. Therefore, my office encourages government institutions to keep in close, direct contact with the Applicant to clarify requests.

[56] I find that while SGI has made some efforts to search for responsive records, it did not conduct a complete search for records. I recommend that SGI search its FPO, and any

other department that may have records related to the Applicant's claim, and provide responsive records to the Applicant within 30 days of receiving the final version of this report.

[57] I also recommend that SGI ensure that it contacts applicants to clarify access to information requests.

IV FINDINGS

[58] I find that SGI has not demonstrated that subsection 15(1)(d) of FOIP applies to redaction #9.

[59] I find that SGI has not demonstrated subsection 15(1)(d) of FOIP applies to redaction #11.

[60] I find that SGI has not demonstrated that subsection 15(1)(d) of FOIP applies to pages P206 and P207.

[61] I find that subsection 17(1)(b)(i) of FOIP does not apply to redaction #3.

[62] I find that subsection 17(1)(b)(i) of FOIP does not apply to redaction #4.

[63] I find that subsection 17(1)(b)(i) of FOIP does not apply to redactions #5A, #5B, and #5C.

[64] I find that subsection 17(1)(b)(i) of FOIP does not apply to redaction #7.

[65] I find that subsection 17(1)(b)(i) of FOIP does not apply to redaction #8.

[66] I find that subsection 17(1)(b)(i) of FOIP does not apply to redaction #9.

[67] I find that subsection 17(1)(b)(i) of FOIP does not apply to redaction #10.

- [68] I find that subsection 17(1)(b)(i) of FOIP does not apply to redaction #11.
- [69] I find that subsection 17(1)(b)(i) of FOIP applies only to the opinion and the seeking of permission for the particular course of action on page P206 but it does not apply to the remainder of the page.
- [70] I find that subsection 17(1)(b)(i) of FOIP does not apply to page P207.
- [71] I find that subsection 17(1)(b)(i) of FOIP does not apply to redaction #15.
- [72] I find that subsection 18(1)(f) of FOIP applies to the reserving information on pages P002 and P208.
- [73] I find that SGI properly applied subsection 29(1) of FOIP on page P043.
- [74] I find that the redacted information on pages P007 and P202 is non-responsive.
- [75] I find that while SGI has made some efforts to search for responsive records, it did not conduct a complete search for records.
- [76] I would like to compliment SGI in the manner and format of the Index of Record. I note that they provide a page number for each page and numbered each of their redactions. This is most helpful in doing a detailed analysis as occurred here. I also note that SGI sent the Index of Record to the Applicant with its response under section 7. I encourage other public bodies to follow this practice.

V RECOMMENDATIONS

- [77] I recommend that SGI release redactions 3, 4, 5A, 5B, 5C, 7, 8, 9, 10, 11, and 15 to the Applicant.

- [78] I recommend that SGI withhold the opinion and the seeking of permission for the particular course of action on page P206 pursuant to subsection 17(1)(b)(i) of FOIP but that it release the remainder of the page.
- [79] I recommend that SGI release page P207 to the Applicant.
- [80] I recommend that SGI disclose the non-responsive information on pages P007 and P202.
- [81] I recommend that SGI provide the Applicant with a copy of the screenshot that lists all the attachments on his claim file. This would enable the Applicant to know what attachments are on his file.
- [82] I recommend that SGI search its FPO, and any other department that may have records related to the Applicant's claim, and provide responsive records to the Applicant within 30 days of receiving the final version of this report.
- [83] I also recommend that SGI ensure that it contacts applicants to clarify access to information requests.

Dated at Regina, in the Province of Saskatchewan, this 26th day of September, 2017.

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