



REVIEW REPORT 107-2017

Saskatchewan Government Insurance

February 9, 2018

Summary:

The Applicant requested a copy of his/her disability claim file from Saskatchewan Government Insurance (SGI). SGI provided partial access to the records on the disability claim file. SGI withheld some portions citing subsections 17(1)(b)(i) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to withhold portions. SGI also indicated that three pages were unresponsive to the access to information request. Upon review, the Commissioner found that the three pages were responsive to the access to information request but found the pages contained the personal information of someone other than the Applicant and recommended they continue to be withheld pursuant to subsection 29(1) of FOIP. The Commissioner also found that SGI appropriately applied subsections 29(1) and 17(1)(b)(i) to the remaining information in the withheld records and recommended the information be withheld. However, the Commissioner found that subsection 17(1)(b)(i) of FOIP did not apply to the email headers and signature lines on some of the records and recommended they be released.

I BACKGROUND

[1] On April 26, 2017, Saskatchewan Government Insurance (SGI) received an access to information request from the Applicant for:

Is it possible for me to get a copy of my SGI disability claim file? This would include all communication between SGI employees as well as SGI and Sunlife...

[2] SGI responded to the request by a letter dated May 23, 2017, indicating that access was partially granted. SGI advised the Applicant that portions of the record were being

withheld pursuant to subsections 17(1)(b)(i) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On May 24, 2017, my office received a Request for Review from the Applicant.

[4] My office notified SGI and the Applicant of our intention to undertake a review on May 31, 2017. On June 22, 2017, SGI provided my office with a copy of the withheld record and its submission.

II RECORDS AT ISSUE

[5] The record at issue in this review totals 13 pages. Five pages were withheld in full citing subsection 17(1)(b)(i) of FOIP. Five pages were withheld in full and in part citing subsection 29(1) of FOIP and three pages were withheld in full and were marked as ‘non-responsive’.

III DISCUSSION OF THE ISSUES

[6] SGI is a “government institution” pursuant to subsection 2(1)(d)(ii) of FOIP.

1. Is there information not responsive to the access to information request?

[7] When a government institution receives an access to information request, it must determine what information is responsive to the access to information request.

[8] *Responsive* means relevant. The term describes anything that is reasonably related to the request. It follows that any information or records that do not reasonably relate to an Applicant’s request will be considered “not-responsive”. The Applicant’s access to information request itself sets out the boundaries of relevancy and circumscribes the records or information that will ultimately be identified as being responsive.

- [9] A government institution can sever information as non-responsive only 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.
- [10] The purpose of FOIP is best served when a government institution adopts a liberal interpretation of a request. If a government institution has any doubts about its interpretation, it has a duty to assist the Applicant by clarifying or reformulating the request.
- [11] SGI marked pages P020, P218 and P219 as non-responsive. The three pages constitute emails. In its submission to my office, SGI submits that these pages contain information concerning a file other than the Applicant's. Further, it submits that as they contain no information concerning the Applicant's disability file, SGI is withholding the pages as non-responsive to the access to information request.
- [12] As noted earlier, the Applicant's request was for:
- ...a copy of my SGI disability claim file? This would include all communication between SGI employees as well as SGI and Sunlife...
- [13] The access to information request is very specific to everything on the Applicant's disability claim file. If these pages were on the Applicant's disability claim file they would be responsive to the access to information request. On January 19, 2018, my office asked SGI to clarify if these pages had been on the Applicant's disability claim file and if so, why. On January 22, 2017, SGI clarified that the pages were on the Applicant's claim file but had been misfiled. The error has since been corrected. Based on this, I find that the pages are responsive to the access request because the Applicant asked for "a copy of my SGI disability claim file". The request would include everything on the file whether it believed it belonged there or not.

[14] I find that pages P020, P218 and P219 are responsive to the access request. SGI also applied subsection 29(1) of FOIP to these pages. Therefore, I will consider them again below.

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

[15] 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 subsection 24(1) of FOIP. Part of that consideration involves assessing if the information has the following two elements:

1. An identifiable individual; and
2. Information that is personal in nature.

[16] Once identified as personal information, the government institution needs to consider subsection 29(1) of FOIP which 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.

[17] SGI withheld information on pages P020, P092, P100, P218, P219, P240, P241 and P253 citing subsection 29(1) of FOIP. All of the pages constitute emails.

[18] In its submission, SGI indicated that the severed information on all of the pages was the personal information of other employees or individuals.

[19] From a review of the pages, it appears the information severed is clearly about individuals other than the Applicant. Therefore, I find that the information qualifies as the personal information of those individuals pursuant to 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;

[20] As there is no apparent consent from those individuals to release the personal information, I find that SGI appropriately applied subsection 29(1) of FOIP to pages P020, P092, P100, P218, P219, P240, P241 and P253.

[21] In the section 7 response to the Applicant, SGI indicated that “page P253 was received partially blacked out from the business area and we are unable to retrieve the original.” The page was not listed on the Index of Records provided to my office or the Applicant. The Applicant takes issue with SGI only having a blacked out version. The page received from my office also has information covered in black marker which SGI has applied subsection 29(1) of FOIP to. My office was able to see the information under the black marker and can confirm that it is personal information of individuals other than the Applicant. Therefore, there is nothing further to consider regarding this page.

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

[22] Subsection 17(1)(b)(i) of FOIP is a discretionary exemption and provides:

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;

...

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

[24] 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.

- [25] 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.
- [26] 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.
- [27] SGI applied subsection 17(1)(b)(i) of FOIP to five pages of the record. This includes pages P018, P112, P113, P114 and P170. In some cases SGI withheld the page entirely relying on subsection 17(1)(b)(i) and on other pages SGI severed some information and released the remainder to the Applicant.
- [28] On the face of the pages, they constitute internal emails between different SGI employees. In its submission, SGI explained the nature of the emails and asserted the communications constitute consultations and deliberations. In addition, it indicated the job titles of each of the employees involved.
- [29] From a review of the emails, it is clear that some information qualifies as consultations and deliberations as there is a going back and forth between five SGI employees regarding the management and administration of personnel. It is clear that suggested courses of action are being discussed. It appears the SGI employees involved are those whose responsibility it would be to make such decisions.
- [30] However, SGI has also withheld email headers and signature lines on pages P018, P112 and P170. I am of the view that the names of authors or correspondents, dates, and subject lines are not exempted from disclosure under subsection 17(1)(b) of FOIP. A number of court decisions, previous Review Reports by my office and other Information and Privacy Commissioners in other jurisdictions are of the same view.

[31] The fact that a person consults or was consulted cannot, in my view, be withheld under subsection 17(1)(b)(i) of FOIP unless this fact also reveals the substance of the consultation. The exemption embraces the substantive parts of the communications that seek an opinion as to the appropriateness of particular proposals or courses of action. This includes any background materials that inform the advisors and are inextricably interwoven with the questions being asked.

[32] SGI did not present arguments as to how the release of the email headers and signature lines on pages P018, P112 and P170 would reveal the substantive parts of the communications which seek an opinion.

[33] Therefore, I find that subsection 17(1)(b)(i) of FOIP does not apply to the email headers and signature lines on pages P018, P112 and P170 and should be released.

[34] Further, I find that the remainder of the information withheld on pages P018, P112, P113, P114 and P170 qualifies for exemption under subsection 17(1)(b)(i) of FOIP.

IV FINDINGS

[35] I find that pages P020, P218 and P219 are responsive to the access request.

[36] I find that SGI appropriately applied subsection 29(1) of FOIP to pages P020, P092, P100, P218, P219, P240, P241 and P253.

[37] I find that subsection 17(1)(b)(i) of FOIP does not apply to the email headers and signature lines on pages P018, P112 and P170.

[38] I find that the content of the emails on pages P018, P112, P113, P114 and P170 qualifies for exemption under subsection 17(1)(b)(i) of FOIP.

V RECOMMENDATIONS

[39] I recommend SGI release the email headers and signature lines on pages P018, P112 and P170 and continue to withhold the remainder of the information on these pages.

[40] I recommend that SGI continue to withhold the information on pages P020, P092, P100, P218, P219, P240, P241 and P253.

Dated at Regina, in the Province of Saskatchewan, this 9th day of February, 2018.

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