



## **REVIEW REPORT 129-2015**

### **Saskatchewan Government Insurance**

**September 22, 2015**

**Summary:** The Applicant requested records from Saskatchewan Government Insurance (SGI) involving herself, SGI and her union. SGI provided partial access to responsive records but withheld portions pursuant to subsections 15(1)(d), 17(1)(b)(i), (c), (d), 18(1)(f), 22(a), (c) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Upon review, the Commissioner found that SGI appropriately applied subsections 22(a), 17(1)(b)(i), 18(1)(f) and 29(1) of FOIP and recommended the portions continue to be withheld.

#### **I BACKGROUND**

[1] On April 23, 2015, Saskatchewan Government Insurance (SGI) received an access to information request from the Applicant for:

All correspondence, investigation reports, of myself, SGI & CUPE 397...

[2] SGI responded to the request by a letter dated June 22, 2015 indicating that access was partially granted. SGI advised the Applicant that portions of the record were being withheld pursuant to subsections 15(1)(d), 17(1)(b)(i), (c), (d), 18(1)(f), 22(a), (c) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On July 2, 2015, 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 July 3, 2015. On August 12, 2015, SGI provided my office with a copy of the withheld record and its submission. No submission was received from the Applicant.

## **II RECORDS AT ISSUE**

[5] The records at issue in this review total 81 pages.

## **III DISCUSSION OF THE ISSUES**

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

### **1. Did SGI properly apply subsection 22(a) of FOIP to the withheld records in question?**

[7] Subsection 22(a) of FOIP are discretionary exemptions and provide:

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

(a) contains information that is subject to solicitor-client privilege;

...

[8] SGI applied subsections 22(a) of FOIP to 11 pages of the record.

[9] Subsection 22(a) is specifically meant to protect information that is subject to solicitor-client privilege. In *R. v. Solosky* (1979), Justice Dickson regarded the rule of solicitor-client privilege as a “fundamental civil and legal right” that guaranteed clients a right to privacy in their communications with their lawyers.

[10] In order to qualify for this exemption, the withheld information must meet all three parts of the following test:

- i. The record must be a communication between solicitor and client;

- ii. The communication must entail the seeking or giving of legal advice or legal assistance; and
- iii. The communication must be intended to be confidential.

*i. The record must be a communication between solicitor and client;*

[11] The public body should make it clear who the solicitor is and who the client is. It does not matter whether the client is an individual, a corporation or a government body, there is no distinction in the degree of protection offered by the rule of solicitor-client privilege. The communications can be written or verbal.

[12] Based on the records and SGI's submission it is clear who the solicitor and client are. Some of the records are emails and it is clear that the emails are being exchanged between SGI's solicitor and SGI employees. Two pages are handwritten notes. It is clear from the content of the notes that they were drafted by an SGI employee and within the notes it clearly indicates she was in telephone communication with SGI's solicitor; the same solicitor in the email exchanges.

[13] Therefore, I find that the first part of the test has been met.

*ii. The communication must entail the seeking or giving of legal advice or legal assistance*

[14] *Legal advice* means a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications.

[15] Communications, verbal or written, that are directly related to the seeking, formulating or giving of legal advice or legal assistance are privileged (including the legal adviser's working papers or materials created or obtained specifically for the lawyer's "brief" for litigation, whether litigation is existing or contemplated). The provision can also apply to attachments to communications between a solicitor and client when the attachments are part of the legal advice.

[16] Based on the records and SGI's submission, it is clear that the records contain the seeking and giving of legal advice between SGI employees and SGI's solicitor. Therefore, I find that the second part of the test is met.

*iii. The communication must be intended to be confidential.*

[17] This includes all communications made "within the framework of the solicitor-client relationship." The nature of the records themselves can imply confidentiality. The question that must be asked is whether granting access to a record requested will disclose any information, directly or indirectly, that is the subject of solicitor-client privilege. Express statements of an intention of confidentiality on records may qualify, for example some email confidentiality clauses qualify if they are specific to the communication.

[18] In this case, the emails contain a confidentiality clause that specifically states the information is legally privileged. In addition, the content of the severed information is such that confidentiality would be implied between the parties. Therefore, I find that the third part of the test is met.

[19] In conclusion, I find that SGI appropriately applied subsection 22(a) of FOIP to the 11 pages of the record which includes pages: P217, P219, P220, P223, a portion of P226, P227, a portion of P228, P231, a portion of P232, a portion of P238 and P240. For those pages that only a portion was found to qualify, SGI also applied subsections 17(1)(b)(i) and 29(1) of FOIP to other severed information on the pages. I will address that information in those sections.

**2. Did SGI properly apply subsection 17(1)(b)(i) of FOIP to the withheld records in question?**

[20] 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;
  - ...

- [21] This provision is meant to permit government institutions to consider options and act without constant public scrutiny.
- [22] 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.
- [23] 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.
- [24] 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.
- [25] SGI applied subsection 17(1)(b)(i) of FOIP to portions of 55 pages. From a review of the pages, they constitute handwritten notes, emails, a draft of a retiring allowance program calculation, a copy of an occupational health and safety complaint, a draft and final version of a grievance table of contents and an information book related to a grievance hearing.
- [26] In its submission, SGI detailed how each of the 55 pages constituted consultations and deliberations. Included was an explanation as to who the SGI employees were and their roles in the organization.
- [27] From a review of the pages and in consideration of SGI’s submission, I agree with SGI that the information in the pages constitute consultations and deliberations. Some of the pages clearly indicate that a particular SGI employee was consulted and what the

outcome of that consultation was for example page P021. Further, some of the pages constitute documents that were drafted to inform grievance dispute resolutions and post termination settlement discussions.

[28] I find that the information severed constitutes consultations and deliberations. Therefore, I find that SGI appropriately applied subsection 17(1)(b)(i) of FOIP to these pages. This includes pages: P021, P038, P051, P052, P226, P230, P241, P242, P244, P247, P248, P251, P252, P257, P262, P287, P288, P293, P294, P295, P299, P300, P301, P335 to P338, P339 to P344, P356, P357, P360 to P362, P411 to P416, P432 to P437 and P441 to P445.

**3. Did SGI properly apply subsection 29(1) of FOIP to the withheld records in question?**

[29] SGI applied subsection 29(1) of FOIP to 14 pages. SGI severed what it determined was personal information and released the remainder of the pages.

[30] 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.

[31] From a review of these pages and SGI's submission, it appears SGI identified the information as personal information pursuant to subsections 24(1)(a), (b), (d) and k(i) of FOIP which provide:

**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*;

...

(k) the name of the individual where:

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

...

[32] 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.

[33] From a review of these pages, I agree with SGI that the information constitutes the personal information of individuals who are not the Applicant. The information relates to the employment history of other individuals, driver license numbers, family status and the name of individuals combined with information of a personal nature.

[34] As the information constitutes personal information, I find that SGI appropriately applied subsection 29(1) of FOIP to the pages. This includes pages: P033, P097, P161, P162, P192, P200, P221, P224, P232, P228, P237, P238, P297 and P298.

**4. Did SGI properly apply subsection 18(1)(f) of FOIP to the withheld record in question?**

[35] Subsection 18(1)(f) of FOIP is a discretionary exemption and provides:

**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;

[36] *Prejudice* in this context refers to detriment to economic interests.

[37] *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.

[38] The public body does not have to prove that prejudice is probable, but needs to show that there is a "reasonable expectation of prejudice" if any of the information or records were to be released.

[39] SGI severed information on page P003 and released the remainder of the page. In its submission, SGI indicated that the severed information was SGI's general bank account number. SGI asserted that withholding it was for the purpose of avoiding any fraudulent activity.

[40] It is clear that if the information severed were released it could prejudice SGI's economic interests. Therefore, I find that SGI appropriately applied subsection 18(1)(f) of FOIP to the severed information.

#### **IV FINDINGS**

[41] I find that SGI appropriately applied subsections 22(a), 17(1)(b)(i), 18(1)(f) and 29(1) of FOIP to the records in question.

#### **V RECOMMENDATIONS**

[42] I recommend that SGI continue to withhold the records in question.



Dated at Regina, in the Province of Saskatchewan, this 22<sup>nd</sup> day of September, 2015.

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