



## **REVIEW REPORT 135-2018**

### **Saskatchewan Government Insurance**

**July 18, 2019**

**Summary:**

In response to an access to information request, Saskatchewan Government Insurance (SGI) withheld nine voice recordings in their entirety. SGI cited subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as its reason. The Information and Privacy Commissioner (IPC) recommended that SGI withhold some of the recordings because they contain the personal information of individuals other than the Applicant. He also recommended that SGI disclose recordings that do not contain personal information. Finally, the IPC recommended that SGI transcribe portions of two recordings and provide the transcription to the Applicant.

### **I BACKGROUND**

- [1] On November 1, 2017, Saskatchewan Government Insurance (SGI) received an access to information request. On November 2, 2017, it clarified with the Applicant's lawyer that the Applicant was seeking a copy of the Applicant's injury file and the auto file associated with an accident that the Applicant was involved in. It should be noted that the Applicant was a passenger, not the driver, in this accident.
- [2] In a letter dated December 1, 2017, SGI responded to the Applicant. It was providing the Applicant access to some but not all of the records. In particular, SGI was withholding nine voice recordings in their entirety from the Applicant pursuant to subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [3] In a letter dated June 14, 2018, the Applicant's lawyer requested a review by my office. In an email dated June 21, 2018, the Applicant's lawyer's legal assistant confirmed that the

Applicant was requesting that my office only review why the voice recordings were not disclosed.

[4] In emails dated July 17, 2018, my office notified SGI and the Applicant that it would be undertaking a review.

**II RECORDS AT ISSUE**

[5] At issue are nine voice recordings. Below is a description of each of the voice recordings.

<b>Record</b>	<b>Description</b>	<b>Exemption applied</b>
Recording #1	10 minutes and 24 seconds in length. Discussion between SGI employee and the driver's father.	Subsection 29(1) of FOIP
Recording #2	58 seconds in length. SGI employee leaving a voice message for the driver.	Subsection 29(1) of FOIP
Recording #3	1 minute and 53 seconds in length. Discussion between SGI employee and the driver's father.	Subsection 29(1) of FOIP
Recording #4	21 minutes and 3 seconds in length. Discussion between SGI employee and the driver.	Subsection 29(1) of FOIP
Recording #5	3 minutes and 25 seconds in length. Discussion between SGI employee and the driver.	Subsection 29(1) of FOIP
Recording #6	2 minutes and 45 seconds in length. Discussion between SGI employee and auto body shop about creek clean up.	Subsection 29(1) of FOIP
Recording #7	3 minutes and 13 seconds in length. Discussion between SGI employee and auto body shop.	Subsection 29(1) of FOIP
Recording #8	3 minutes and 24 seconds in length. Discussion between SGI employee and the driver's employer.	Subsection 29(1) of FOIP

Recording #9	2 minutes and 32 seconds in length. Discussion between SGI employee and the auto body shop.	Subsection 29(1) of FOIP
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### III DISCUSSION OF THE ISSUES

#### 1. Do I have jurisdiction to review this matter?

[6] SGI qualifies as a government institution pursuant to subsection 2(d)(ii) of FOIP. Therefore, I find that I have jurisdiction to review this matter.

#### 2. Did SGI properly withhold the voice recordings pursuant to subsection 29(1) of FOIP?

[7] According to its response letter dated December 1, 2017, SGI withheld the nine voice recordings in their entirety pursuant to subsection 29(1) of FOIP. It asserts that the voice recordings contains the driver’s (and not the Applicant’s) personal information. 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.

[8] In order to rely on subsection 29(1) of FOIP to withhold records, the government institution must determine if the information qualifies as “personal information” as defined by subsection 24(1) of FOIP. A part of that determination involves assessing if the information has both of the following:

1. Is there an identifiable individual?
2. Is the information personal in nature?

[9] Subsection 24(1) of FOIP defines “personal information” as follows:

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:

...

(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;

...

(e) the home or business address, home or business telephone number or fingerprints of the individual;

(f) the personal opinions or views of the individual except where they are about another individual;

...

(k) the name of the individual where:

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

[10] It should be noted that subsection 24(2)(e) of FOIP provides that the details of a license granted to an individual by a government institution does not qualify as personal information. It provides as follows:

24(2) “Personal information” does not include information that discloses:

...

(e) details of a licence, permit or other similar discretionary benefit granted to an individual by a government institution;

[11] I will consider each recording to determine if the contents of the voice recordings qualify as personal information of someone other than the Applicant (for example, is it the driver’s or the driver’s father’s personal information?)

[12] Before I proceed, I note that Order F2009-044 by Alberta’s Office of the Information and Privacy Commissioner (AB OIPC) found that a person’s voice paired with other information qualifies as personal information:

The individuals who made the recorded calls are identifiable based on what they said in the recording, coupled with what was found in the subsequent investigation regarding the incident. Although, on the basis of voice alone, the general public would not be able to identify the individuals on the recording, this is not the test. I find that the voices paired with what the people in the recording said and the information in the

file, would make these individuals identifiable to some other persons and therefore this information in the recordings is personal information.

[13] Further, in Order P2011-003, the AB OIPC provided that a person's voice, tone and inflection could also qualify as personal information. It says:

[para 12] The Organization compares the recording of a telephone conversation to the taking of notes by hand or on computer. There is an important distinction, however. When an employee takes notes in order to record the personal information of an individual, the employee is collecting the substance of the information being provided, and possibly also the employee's opinions or observations of the way in which the substantive information is being conveyed. In this case, when the employee of the Organization collected the information from the Complainant by way of the electronic recording, he collected additional personal information from her, within the meaning of section 1(k), in the form of her voice, tone, inflection, etc. This is the personal information at issue here, which I will refer to as the "Voice Recording".

[14] I agree with the above. A person's voice paired with identifying information that is personal in nature qualifies as personal information as defined by subsection 24(1) of FOIP.

[15] Below is my analysis of each recording:

- Recordings #1 and #3 are discussions between a SGI employee and the driver's father. I find that these two recordings contain the personal information of the driver's father because it contains the driver's father's name and voice. Further, I find that these two recordings contains the personal information of the driver as the discussion is about the driver. However, I must note that at the 9 minute and 39 second mark to the 9 minute and 55 second mark of recording #1 (total of 16 seconds), the discussion is about the Applicant. I find that these 16 seconds qualify as the Applicant's personal information. Since it is the driver's father conveying the Applicant's personal information, the driver's father and the Applicants' personal information are woven together. Later in this report, I will discuss if recording #1 can be reasonably severed pursuant to section 8 of FOIP.
- Recording #2 is the driver's voicemail greeting (which includes the driver's name) and a voicemail message by a SGI employee. The voicemail message which includes the driver's claim number. I find that recording #2 contains the driver's personal information. I recommend that SGI withhold recording #2 in its entirety pursuant to subsection 29(1) of FOIP.
- Recordings #4 and #5 are discussions between a SGI employee and the driver. The majority of the recording is about the driver (where he lives, where he works, details of his injuries, etc.). I find that such information qualifies as the driver's personal

information. Further, I find that the driver's voice in these two recordings paired with the driver's identifiable information qualifies as personal information. However, I note that at the 38 second mark to the 2 minute and 24 second mark of recording #4 (totaling 1 minute and 46 seconds), the discussion is about the Applicant. I find that this 1 minute and 46 seconds qualify as the Applicant's personal information. Since it is the driver conveying the Applicant's personal information, then the driver and the Applicants' personal information are woven together. Later in this report, I will discuss if recording #4 can be reasonably severed pursuant to section 8 of FOIP.

- Recordings #6 and #7 are discussions between a SGI employee and an auto body shop. The recordings do not contain the information that is personal in nature about an identifiable individual. In other words, I find that these recordings do not contain personal information. I recommend that SGI release these recordings to the Applicant.
- Recording #8 is a discussion between a SGI employee and the driver's employer. It includes details of the driver's employment. I find that the information in this recording qualifies as the driver's personal information. I recommend that SGI withhold recording #8 in its entirety pursuant to subsection 29(1) of FOIP.
- Recording #9 is a discussion between a SGI employee and an auto body shop. While the majority of the recording is not information that is personal in nature, the SGI employee conveys the driver's claim number between the 39 second mark and the 46 second mark (a total of 7 seconds). In my Review Report 104-2017, I found that claim numbers qualified as personal information as defined by subsection 24(1) of FOIP. Therefore, I find that the seven seconds that contains the driver's claim number in this recording qualifies as the driver's personal information. I note that the SGI employee conveys the driver's license plate number. Such information does not qualify as personal information pursuant to subsection 24(2)(e) of FOIP. In Review Report 146-2017, I had found that licence plate numbers do not qualify as personal information. I recommend that SGI sever the 7 seconds (from the 39 second mark to the 46 second mark of this recording) and release the remainder to the Applicant. Later in this report, I will need to determine if this recording can reasonably be severed pursuant to section 8 of FOIP.

### **3. Can recordings #1 and #4 be reasonably severed pursuant to section 8 of FOIP?**

[16] Subsection 31(1) of FOIP provides individuals with a right of access to their personal information. It provides:

31(1) Subject to Part III and subsection (2), an individual whose personal information is contained in a record in the possession or under the control of a government institution has a right to, and:

(a) on an application made in accordance with Part II; and

(b) on giving sufficient proof of his or her identity;

shall be given access to the record.

[17] When an individual's personal information appears among information to which the applicant is refused access (for example, another person's personal information), then the public body must give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access, pursuant to section 8 of FOIP. Section 8 of FOIP provides:

8 Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.

[18] As I found earlier, in recording #1, the driver's father's voice paired with the driver's father's identifiable information of a personal nature qualifies as the driver's father's personal information. However, I also found that 16 seconds of recording #1 qualifies as the Applicant's personal information. The driver's father's personal information is woven together with the Applicant's personal information. I must determine if recording #1 can reasonably be severed pursuant to section 8 of FOIP.

[19] Similarly, in recording #4, the driver's voice paired with the driver's identifiable information of a personal nature qualifies as the driver's personal information. However, I found that 1 minute and 46 seconds of recording #4 qualifies as the Applicant's personal information. Since the driver's personal information is woven together with the Applicant's personal information, I must also determine if recording #4 can reasonably be severed pursuant to section 8 of FOIP.

[20] In its submission, SGI indicated that severing the voice recordings would not be a reasonable consideration. It asserted that severing the voice recordings is entirely manual and time-consuming. It said that a 2-minute clip could take approximately 20 to 30 minutes. Further, it asserted that severing the voice recordings would likely result in a

rather disjointed incomprehensible discussion. It argued that extracting the audio only works if the dialogue before and after the extracted audio makes sense when played back. To support its argument, it quoted paragraph 237 of *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23, which provides:

[237] The heart of the s. 25 exercise is determining when material subject to the disclosure obligation “can reasonably be severed” from exempt material. In my view, this involves both a semantic and a cost-benefit analysis. The semantic analysis is concerned with whether what is left after excising exempted material has any meaning. If it does not, then the severance is not reasonable....The cost-benefit analysis considers whether the effort of redaction by the government institution is justified by the benefits of severing and disclosing the remaining information. Even where the severed text is not completely devoid of meaning, severance will be reasonable only if disclosure of the unexcised portions of the record would reasonably fulfill the purposes of the Act. Where severance leaves only “[d]isconnected snippets of releasable information”, disclosure of that type of information does not fulfill the purpose of the Act and severance is not reasonable....

[21] I note that subsection 10(3) of FOIP is about the manner of access to a record. It provides as follows:

10(3) If a record is a microfilm, film, sound or video recording or machine-readable record, a head may give access to the record:

- (a) by permitting the applicant to examine a transcript of the record;
- (b) by providing the applicant with a copy of the transcript of the record; or
- (c) in the case of a record produced for visual or aural reception, by permitting the applicant to view or hear the record or by providing the applicant with a copy of it.

[22] I considered subsection 10(3) of FOIP in my Review Report 110-2015. In that report, I said that FOIP does not require government institutions to provide both audio and transcription copies of a record. However, in this case, transcribing portions of recordings #1 and #4 would effectively sever the driver’s voice and the driver’s father’s voice from the Applicant’s personal information. Pursuant to section 8 of FOIP, I find it is reasonable to sever recordings #1 and #4 by transcribing the portions that contains the Applicant’s personal information. I recommend that SGI provide the Applicant with a transcript of the 9 minute and 39 second mark to the 9 minute and 55 second mark of recording #1 and the 38 second mark to the 2 minute and 24 second mark of recording #4.



**4. Can recording #9 be reasonably severed pursuant to section 8 of FOIP?**

[23] As noted above, the driver's personal information (namely, the driver's claim number) appears at the 39 second mark to the 46 second mark of recording #9. Otherwise, the remainder of the recording does not qualify as personal information as defined by subsection 24(1) of FOIP.

[24] Recording #9 is distinct from recordings #1 and #4 in that it is a SGI employee acting in their professional capacity conveying the driver's personal information, and not by individuals such as the driver and the driver's father acting in their personal capacities.

[25] I need to determine if the voice of the SGI employee constitutes work product or personal information. In previous reports by my office, I have found that work product does not qualify as personal information. Work product is information generated by or otherwise associated with individuals in the normal course of performing their professional or employment responsibilities. Further, AB OIPC has found that voices of individuals acting in their professional or business capacity does not qualify as personal information. At paragraph 18 of Order P2014-04, AB OIPC said the following:

[para 18] An identifiable individual's voice, tone and inflection revealed by an audio recording can constitute his or her personal information (see Order P2011-003 at para. 12). However, where the individual's voice is recorded as a result of his or her employment duties, the recording constitutes work product, which normally does not consist of personal information, unless there is a personal dimension (see Order P2011-002 at paras 13 to 22, which found that images of employees in a promotional video, which video would also have revealed their voices, were their work product and therefore not their personal information). It has also been expressly stated that "tapes of calls" made by an employee constitutes work product created in the course of employment, and is generally not the personal information of the employee (Order P2006-005 at para 50).

[26] I agree with the above. I find that the voice of a SGI employee acting in their professional capacity qualifies as work product and not as personal information. Because of this finding, redacting recording #9 would not have the same challenge as redacting recordings #1 and #4.

[27] Earlier, I summarized SGI's arguments for why severing the recordings would not be reasonable, including how severing voice recordings is entirely manual and time-consuming. It stated that severing a 2-minute clip would take approximately 20 to 30 minutes and that the severing of the voice recordings would likely result in a rather disjointed incomprehensible discussion.

[28] When I consider recording #9, SGI will be required to sever 7 seconds from the recording (the 39 second mark to the 46 second mark). Severing these 7 seconds from recording #9 would not be unreasonably time-consuming nor would it result in a disjointed incomprehensible discussion. Therefore, I find that recording #9 can reasonably be severed pursuant to section 8 of FOIP. I recommend that SGI sever the 7 seconds from recording #9 and release the remainder of recording #9 to the Applicant.

#### **IV FINDINGS**

[29] I find that I have jurisdiction to review this matter.

[30] I find that recording #1 contains the personal information of the driver, the driver's father, and the Applicant.

[31] I find that recording #2 contains the personal information of the driver.

[32] I find that recording #3 contains the personal information of the driver and the driver's father.

[33] I find that recording #4 contains the personal information of the driver and the Applicant.

[34] I find that recording #5 contains the personal information of the driver.

[35] I find that recordings #6 and #7 do not contain information that is personal in nature about an identifiable individual.

- [36] I find that recording #8 contains the personal information of the driver.
- [37] I find that recording #9 does not contain personal information except for the driver's claim number.
- [38] I find it is reasonable to sever recordings #1 and #4 by transcribing the portions that contains the Applicant's personal information pursuant to section 8 of FOIP.
- [39] I find that recording #9 can reasonably be severed pursuant to section 8 of FOIP.

## **V RECOMMENDATIONS**

- [40] I recommend that SGI withhold recordings #2, #3, #5, and #8 in their entirety.
- [41] I recommend that SGI disclose recordings #6 and #7 to the Applicant.
- [42] I recommend that SGI sever the 7 seconds (from the 39 second mark to the 46 second mark) of recording #9 and release the remainder of the recording to the Applicant.
- [43] I recommend that SGI provide the Applicant with a transcript of the 9 minute and 39 second mark to the 9 minute and 55 second mark of recording #1 and the 38 second mark to the 2 minute and 24 second mark of recording #4.

Dated at Regina, in the Province of Saskatchewan, this 18th day of July, 2019.

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