



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 146-2017**

### **Saskatchewan Government Insurance**

**August 16, 2018**

#### **Summary:**

The Applicant submitted an access to information request to Saskatchewan Government Insurance (SGI). SGI denied access to a portion of the requested information pursuant to subsections 15(1)(d) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP), therefore the Applicant requested a review of this decision by the Information and Privacy Commissioner (Commissioner). Through the course of the review, SGI indicated it was also relying on subsection 17(1)(b) of FOIP for a portion of the records. The Commissioner found that subsection 15(1)(d) of FOIP applied to the record and recommended SGI continue to withhold that information. The Commissioner found that subsection 29(1) of FOIP applied to portions of the withheld information and recommended SGI continue to withhold those portions of information and release the remainder. The Commissioner recommended that SGI begin consultations with the Government of Saskatchewan for an amendment that captures certain details found on a driver's licence as personal information under subsection 24(1) of FOIP and amendments to disclosure provisions under subsection 17 of the FOIP Regulations. Finally, the Commissioner recommended that the Government of Saskatchewan enter into consultations with SGI and others regarding these proposed amendments.

#### **I BACKGROUND**

- [1] The Applicant submitted an access to information request pursuant to *The Freedom of Information and Protection of Privacy Act* (FOIP) which was received by Saskatchewan Government Insurance (SGI) on May 15, 2017, requesting access to:

1. SGI's internal privacy breach investigation report, referred to at paragraph [5] of the Information & Privacy Commissioner's Investigation Report 131-2015, into numerous numerous [sic] privacy breaches by Lestock Agencies unauthorized access to the Autofund database.
2. With regard to paragraph [22] of Investigation Report 131-2015 of the Saskatchewan Information and Privacy Commissioner dated September 20, 2015 specifying preventative measures that SGI would implement:
  - a) The report or other document that reports whether the Auto Fund's monitoring of "all activity conducted by Lestock Agencies for a period of one year" identified any privacy transgressions;
  - b) The document confirming that all Lestock Agencies staff completed Issuer Privacy Training within two months from the date of the Investigation Report;
  - c) The date on which SGI fully implemented a system prompt for all non-transaction accesses to the Auto Fund database for all Issuer offices in Saskatchewan;
  - d) The date on which SGI fully implemented an E-Learning module for licence issuers; and
  - e) The date on which SGI fully implemented a program for monitoring (auditing) issuer use of the Auto Fund database.

[2] By letter dated June 23, 2017, SGI responded to the request denying access in part pursuant to subsections 15(1)(d) and 29(1) of FOIP.

[3] The Applicant requested a review of this decision by my office on July 13, 2017. My office provided notification to SGI and the Applicant of our intention to conduct the review on July 24, 2017 and invited both parties to make a submission. My office received a submission from SGI on August 31, 2017.

[4] In its submission, SGI also raised subsection 17(1)(b) of FOIP to pages 001 to 010. Therefore, this review will consider if subsections 15(1)(d), 17(1)(b) and 29(1) of FOIP apply to the record.

## II RECORDS AT ISSUE

[5] The record at issue totals 91 pages. SGI denied access in full to pages 001 to 010 pursuant to subsections 15(1)(d) and 17(1)(b) of FOIP and denied partial access to pages 011 to 091 pursuant to subsection 29(1) of FOIP.

- Pages 001 – 010: breach investigation report
- Pages 011 – 087: audit log printouts
- Pages 088 – 090: issuer notes
- Page 091: screen print of SGI online training tool *Net Dimensions Talent Suite*

[6] In circumstances where SGI has applied more than one exemption, if I find an exemption applies to portions of information, I will not consider the other exemptions SGI has applied to those same portions of information.

## III DISCUSSION OF THE ISSUES

### 1. Do I have jurisdiction?

[7] SGI is a “government institution” pursuant to subsection 2(1)(d)(ii) of FOIP. Thus, I have authority to conduct this review.

### 2. Does subsection 15(1)(d) of FOIP apply to this record?

[8] SGI denied access in full to the breach investigation report (pages 001 to 010) pursuant to subsection 15(1)(d) of FOIP.

[9] Subsection 15(1)(d) of FOIP is a discretionary exemption, and provides:

**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 this provision to be found to apply, both parts of the following test must be met:

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

[11] I will now consider each part of the test.

***1. Do the proceedings qualify as legal proceedings?***

[12] *Legal proceedings* are proceedings governed by rules of court or rules of judicial or quasi-judicial tribunals that can result in a judgement of a court or a ruling by a tribunal. Legal proceedings include all proceedings authorized or sanctioned by law, and brought or instituted in a court or legal tribunal for the acquiring of a right or the enforcement of a remedy. To qualify for this exemption, the legal proceedings must be existing or anticipated.

[13] SGI has advised me that a lawsuit has commenced against SGI and others related to this matter and has provided me with the Court of Queen's Bench file number. As of the date of this report, my office confirmed with SGI that this matter has not yet gone to trial and therefore has not concluded. Therefore, I find that the first part of the test has been met.

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

[14] Subsection 15(1)(d) of FOIP is a harms-based exemption. The threshold for the public body to reach is that the release of the information could have the specified result of the specific provision.

[15] *Injury* implies damage or detriment. The exemption is designed to protect the public body from harm in its existing or anticipated legal proceedings. There must be objective

grounds for believing that disclosing the information could result in injury. The criteria used to determine whether the SGI has met the threshold in demonstrating injury is:

- Is there a clear cause and effect relationship between the disclosure and the harm which is alleged?
- Is the harm caused by the disclosure more than trivial or inconsequential?
- Is the likelihood of harm genuine and conceivable?

[16] Further, this subsection uses the term *could*. The requirement for *could* is simply that the release of the information could have the specified result. The threshold for this test is somewhat lower than that of reasonable expectation of harm.

[17] Discovery and disclosure provisions of *The Queen's Bench Rules* of Saskatchewan operate independent of any process under FOIP. Subsection 4(c) of FOIP establishes that the Act does not limit access to information otherwise available by law to parties to litigations. Section 4 also establishes that the Act complements and does not replace existing procedures for access to records. Therefore, the injury should be above any prejudice that relates to the production of a relevant, non-privileged document in the usual course of a lawsuit.

[18] SGI has provided my office with arguments that demonstrate that the breach investigation report, if released, could be injurious to the pending lawsuit against SGI.

[19] Further, I would like to note that it is important in the judicial system that legal proceedings proceed in a fair and impartial manner without external influences that could potentially affect the outcome. Subsection 9-1(1) of *The Queen's Bench Rules* of Saskatchewan allow either party to demand a jury trial any time before the local registrar has scheduled a date for trial. At the time of this review report being issued, a trial date has not been set. Therefore, injury could result from potential swaying of jury members prior to trial. The second part of the test has been met for this information.

[20] I find that subsection 15(1)(d) of FOIP applies to pages 001 to 010 of the record.

[21] As I have found that this exemption applies, I will not be considering subsection 17(1)(b) of FOIP.

**2. Is there personal information in this record?**

[22] SGI has denied access to portions of information found on pages 011 to 091 pursuant to subsection 29(1) of the record.

[23] There are protection of privacy provisions under FOIP that must be considered. 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 related except in accordance with this section or section 30.

[24] Subsection 24(1) of FOIP outlines the type of information that is considered personal in nature. Subsection 24(1) of FOIP 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:

(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;

(c) **Repealed.** 1999, c.H-0.021, s.66.

(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*;

(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;

(g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

(h) the views or opinions of another individual with respect to the individual;

(i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;

(j) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(k) the name of the individual where:

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

(ii) the disclosure of the name itself would reveal personal information about the individual.

[25] The list of examples provided in subsection 24(1) of FOIP are not meant to be exhaustive. There can be other types of information that would qualify as personal information. In assessing if information qualifies as personal information, the information must have two elements. There must be an identifiable individual and the information must be personal in nature.

[26] To assess if there is an *identifiable individual* it must be reasonable to expect that an individual may be identified if the information were disclosed. The information must reasonably be capable of identifying particular individuals. The information can directly identify the individual, such as by name. Alternatively, the information can enable an accurate inference to be made as to their identity combined with other available sources of information or due to the context of the information in the record.

[27] Secondly, the information must be *personal in nature*. This means that the information reveals something personal about the individual. Information that relates to an individual

in a professional, official or business capacity could only qualify if the information revealed something personal about the individual. For example, information that fits the definition of employment history.

[28] However, subsection 24(2) of FOIP outlines types of information that is not considered personal information. Subsection 24(2)(e) of FOIP provides:

**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;

[29] Pages 011 to 087 are an audit log. SGI has withheld two columns of information on each of these pages. The information that has been withheld in the first column is the customer number which is also the driver’s licence number. The second column of information represents the views by the issuer. For example, it lists when the issuer viewed a vehicle registration certificate or a driver appointment receipt. This column also includes licence plate numbers in some of the rows. There are no names listed in these two columns.

[30] In its submission, SGI asserted that the redacted portions include people’s names, customer numbers and licence plate numbers that do business with Lestock Agencies. Further, it noted that SGI is of the view this is personal information and cannot be disclosed.

[31] I have considered this type of information recently in SGI Review Report 063-2017. In that report, I observed:

[11] A similar matter was considered by the Court of Appeal for Saskatchewan in 1993, not long after FOIP came into effect. The Applicant in *General Motors Acceptance Corp. of Canada v. Saskatchewan Government Insurance*, [1993] S.J. No. 601 was seeking the name and address of a new owner of a specific vehicle identified by make, model and serial number. It was seeking the information for the purpose of dealing with a lien. The conclusion of the Court was that the name and address of the owner of the vehicle was not personal information pursuant to



subsection 24(2)(e) of FOIP. It stated that “the plain language of s.24(2)(e) indicates that details of a licence or permit are excluded from the operation of s.24(1).” The Court ordered that the information be released to the Applicant.

[12] SGI respectfully indicated that it believed this decision was “incorrectly decided”. It noted the following excerpt from the decision:

The centralized database for vehicle registration records does not differ in principle from a land registry or personal property security registry. A search to ascertain the name and last address of a land owner, does not offend any reasonable expectation of privacy. If a landowner is a potential defendant, one can readily ascertain her/his identity by a search of the "public" record – a record that contains no significant personal details. Similarly the Registrar of the Court of Queen's Bench maintains a Wills and Estates Registry for the Province of Saskatchewan. A search of this registry discloses whether letters probate or letters of administration have issued and if so, the name and address for service of the executor or administrator. We conclude that the Legislature did not intend to impede litigation by denying a prospective litigant essential information concerning the ownership of a motor vehicle. Reading [FOIP] as a whole, we conclude that the information sought is not "personal information".

[13] SGI’s rationale for disputing the correctness of the decision lies in the inability to reconcile the court’s interpretation of FOIP with the *FOIP Regulations* (the Regulations). Section 17 of the Regulations provides a list of circumstances when driver’s licence and registration information may be shared for the purposes of subsection 29(2)(u) of the Act.

[14] Subsection 29(2)(u) of FOIP provides:

29(2) Subject to any other Act or regulation, personal information in the possession or under the control of a government institution may be disclosed:

...

(u) as prescribed in the regulations.

[15] Section 17 of the Regulations provides:

17(1) In this section:

(a) “driver licence information” means the name and address of a driver;

(b) “driver record information” means information with respect to:

(i) a driver’s convictions for vehicle-related offences; or

(ii) accidents involving a driver;

(c) “registrar of motor vehicles” means the person or body in any jurisdiction that performs the duties of superintending the registration of motor vehicles and the licensing of drivers in that jurisdiction, and includes the deputy of that person or body;

(d) “registration information” means the name and address of the owner of a vehicle;

(e) “SGI” means the corporation continued pursuant to section 3 of *The Saskatchewan Government Insurance Act, 1980*.

(2) For the purposes of clause 29(2)(u) of the Act, SGI may disclose registration information to:

(a) a receiver or a trustee in bankruptcy for the purpose of permitting that person to carry out the duties of a receiver or a trustee in bankruptcy;

(b) legal counsel acting in a matter directly related to an accident or a claim for damages arising out of the ownership, operation or use of the vehicle;

(c) a person licensed pursuant to *The Motor Dealers Act* or to a manufacturer of vehicles for the purpose of recalling vehicles or making inspections for safety purposes;

(d) a local authority for the purpose of facilitating the collection of outstanding fees, fines or other indebtedness arising out of the ownership, operation or use of the vehicle;

(e) a registrar of motor vehicles in any jurisdiction.

(3) For the purposes of clause 29(2)(u) of the Act, SGI may disclose driver licence information to:

(a) a person who acts as legal counsel for the estate of a deceased driver for the purpose of administering the estate;

(b) a registrar of motor vehicles in any jurisdiction, and may also disclose driver record information to a registrar of motor vehicles;

(c) the War Amputations of Canada for the purpose of allowing that organization to operate a key return service.

[16] Section 17 of the Regulations describes when SGI is able to disclose personal information. However, statutes trump Regulations, subsection 24(2)(e) of FOIP indicates that the information in question does not qualify as personal information. I regret having to reach this conclusion.

[17] Reluctantly, but consistent with the ruling of the Court of Appeal of Saskatchewan, I find that the information in question does not qualify as personal information. So with reservation, I conclude SGI has not appropriately applied subsection 29(1) of FOIP to the record.

[32] In the Alberta Court of Appeal Decision *Leon's Furniture v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94, the Court noted:

[49] The adjudicator's conclusion that the driver's licence number is "personal information" is reasonable, because it (like a social insurance number or a passport number) is uniquely related to an individual. With access to the proper database, the unique driver's licence number can be used to identify a particular person: *Gordon v. Canada (Minister of Health)*, 2008 FC 258 (CanLII), 324 F.T.R. 94, 79 Admin. L.R. (4th) 258 at paras. 32-4. But a vehicle licence is a different thing. It is linked to a vehicle, not a person. The fact that the vehicle is owned by somebody does not make the licence plate number information about that individual. It is "about" the vehicle. The same reasoning would apply to vehicle information (serial or VIN) numbers of vehicles. Likewise a street address identifies a property, not a person, even though someone may well live in the property. The licence plate number may well be connected to a database that contains other personal information, but that is not determinative. The appellant had no access to that database, and did not insist that the customer provide access to it.

[50] It is also contrary to common sense to hold that a vehicle licence number is in any respect private. All vehicles operated on highways in Alberta must be registered, and must display their licence plates in a visible location: *Traffic Safety Act*, R.S.A. 2000, c. T-6, ss. 52(1)(a) and 53(1)(a). The requirement that a licence plate be displayed is obviously so that anyone who is interested in the operation of that vehicle can record the licence plate. The fact that the licence plate number might be connected back to personal information about the registered owner is obvious, but the *Traffic Safety Act* nevertheless requires display of the licence plate. Control of that information is provided by controlling access to the database. It makes no sense to effectively order, as did the adjudicator, that everyone in the world can write down the customer's licence plate number, except the appellant.

[51] In summary, the adjudicator's conclusion that a driver's licence number is "personal information" is reasonable. The conclusion that a licence plate number is also "personal information" is not reasonable, and the adjudicator's ruling must be set aside insofar as it dealt with licence plate numbers.

[33] I would note that Alberta's legislation differs from Saskatchewan's FOIP, as the data elements captured on a driver's licence appeared to be captured under the definition of personal information in Alberta, where it is not in Saskatchewan.

[34] The *entity\_id* column on pages 011 to 087 lists the specific customer/driver's licence number. Individuals are assigned a customer number when you first enter into a relationship with SGI, for example, when you apply for a driver's licence. This customer number is an individual's unique identifier with SGI. As outlined above, other numbers that are unique and assigned to an individual are considered personal information under subsection 24(1)(d) of FOIP including, "any identifying number, symbol or other particular assigned to the individual..." Examples could include social insurance numbers or a student number assigned by a post-secondary institution. However, FOIP has specifically outlined that details of a licence is not considered personal information.

[35] I have fundamental concerns with this. An individual's driver's licence, which includes the customer number, is now commonly being requested and retained by other organizations outside of SGI for identification purposes. For example, when you set up an account at a bank or take out a mortgage this is a piece of identification that is being requested.

[36] It is my belief there should be greater protections for information that appears on a driver's licence because it can be used for purposes that make an individual a target for fraud or identity theft. In the Alberta Court of Appeal decision quoted above, the court compared the driver's licence number to a social insurance or passport number. Given the expanded use by other organizations of the driver's licence number, I agree with this comparison.

[37] Further, an SGI issued driver's licence contains the following data elements that if they appeared in a format other than the driver's licence, these elements would be captured under the definition of personal information:

- name;

- signature;
- customer number;
- home address;
- date of birth;
- eye colour;
- sex;
- height;
- photo of the individual.

[38] I cannot understand why FOIP legislation does not offer the same protection of privacy provisions to information on the driver's licence. Regrettably, it does not and I have no choice but to find that in this context the customer number is not personal information.

[39] I will now look at the *application\_event* column on pages 011 to 087 that includes information such as views on licence plate numbers and vehicle registration certificates. I would like to note that there are no names of individuals included here. This column includes licence plate numbers and various document views by the Lestock licence issuer.

[40] Section 193 of *The Traffic Safety Act* (TSA) outlines the way in which a licence plate must be displayed. Subsection 193(1) of TSA provides:

**193(1)** One licence plate issued pursuant to this Act:

- (a) must be affixed to the vehicle to which the licence plate is issued; and
- (b) must be displayed:
  - (i) in the case of a power unit, on the front of the vehicle; and
  - (ii) in the case of a vehicle other than power unit, on the rear of the vehicle.

[41] This section outlines that the TSA requires that the licence plate be publicly displayed on the vehicle. Further, I agree with the Alberta Court of Appeal determination that the licence plate is about the vehicle and not the person. Therefore, the licence plate numbers would not qualify as personal information.

- [42] The remaining information in this column relate to specific types of views of information. For example, in several cases it notes that the user viewed the vehicle registration certificate or viewed the licence plate. This type of information would not be considered personal information as does not disclose something about the individual and the details of a licence does not qualify as personal information. Therefore, this information does not qualify as personal information.
- [43] There are a few instances in the last column on these pages that SGI has withheld information as personal information. These are short transaction notes that would not reveal something personal in nature about an identifiable individual. Therefore, this information would not qualify as personal information.
- [44] The information that has been withheld on pages 088 to 090 are notes of the Lestock Agency on particular transactions. The information relates to the transaction that would not reveal anything personal in nature. However, there are instances where individuals' names have been included in the transaction notes. SGI should continue to withhold the names of individuals on these pages and release the remaining information.
- [45] The information that has been withheld on page 091 shows whether an individual passed or failed an online exam. The name of the individual has not been redacted from that page as it is the name of someone in their capacity as an employee of the SGI authorized agency. However, the fact that this individual passed or failed an exam would qualify as personal information pursuant to subsection 24(1)(b) of FOIP as it is considered education history. Therefore, this information should be protected from disclosure pursuant to subsection 29(1) of FOIP.
- [46] I find the information withheld on page 091 and the names of individuals found on pages 088 to 090 qualify as personal information, however the remaining information on pages 011 to 090 does not qualify as personal information.

[47] I am concerned that FOIP does not recognize driver's licence information as personal information. Most of the data elements found on a driver's licence, if it was in any other form, would be considered personal information under FOIP.

[48] As noted above, statute trumps Regulations. However, FOIP and the Regulations are conflicting in its treatment of driver's licence information because subsection 24(2) of FOIP carves the details of a licence out of the definition of personal information but section 17 of the Regulations treats this same type of information as personal information. FOIP needs to be clarified.

[49] Therefore, it is time that an amendment under FOIP is considered to include certain details of a driver's licence to be captured under the definition of personal information under FOIP. I am prepared to work with SGI to ask for this amendment. I acknowledge that in order to strike the balance related to circumstances in which certain driver's licence information can be disclosed if it is captured under the definition of personal information, section 17 of the Regulations will need to be amended.

[50] I will write the Government of Saskatchewan outlining that it should consider consultations with SGI and others for these amendments to move forward.

#### **IV FINDINGS**

[51] I find that subsection 15(1)(d) of FOIP applies to pages 001 to 010 of the record.

[52] I find the information withheld on page 091 and the names of individuals found on pages 088 to 090 qualify as personal information, however the remaining information on pages 011 to 090 does not qualify as personal information.

#### **V RECOMMENDATIONS**

[53] I recommend that SGI continue to withhold pages 001 to 010 of the record.

- [54] I recommend that SGI release the withheld information on pages 011 to 087 to the Applicant.
- [55] I recommend that SGI continue to withhold the individual's names on pages 088 to 090 and release the remaining information found on these pages to the Applicant.
- [56] I recommend that SGI continue to withhold the information found on page 091.
- [57] I recommend that SGI begin consultations with the Government of Saskatchewan for an amendment that captures certain details found on a driver's licence as personal information under subsection 24(1) of FOIP and amendments to disclosure provisions under subsection 17 of the Regulations.
- [58] I recommend the Government of Saskatchewan enter into consultations with SGI and others regarding the proposed amendments outlined in paragraph [57].

Dated at Regina, in the Province of Saskatchewan, this 16th day of August, 2018.

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