



## **REVIEW REPORT 169-2020**

### **Saskatchewan Government Insurance**

**February 3, 2021**

#### **Summary:**

Saskatchewan Government Insurance (SGI) received a request for correction of personal health information from the Applicant. SGI responded that it was unable to make the corrections, but would make a notation. The Applicant requested a review from the Commissioner, asking that corrections be made. The Commissioner found that the information and records involved in this case were obtained by SGI for the purpose of Part VIII of *The Automobile Accident Insurance Act* (AAIA). The Commissioner also found that *The Health Information Protection Act* and *The Freedom of Information and Protection of Privacy Act* (FOIP) do not apply in this case. Regarding the correction request, the Commissioner recommended that SGI take no further action. The Commissioner also recommended that SGI request the Minister of Justice amend subsection 24(1.2) of FOIP to also include personal health information in the possession or control of SGI.

#### **I BACKGROUND**

- [1] On July 8, 2019, Saskatchewan Government Insurance (SGI) received a request for personal health information to be corrected on an injury claim file. The request was received from the parent of the individual whose personal health information was at issue.
- [2] On August 8, 2019, SGI responded to the request indicating that SGI was unable to make the correction, but would make a notation on the file instead. SGI stated:

... SGI will ensure that the documents that you provided to the Privacy Department on July 8, 2019 will be placed on the injury file, and a note will be placed on the file indicating that you have requested corrections to your file but that SGI is not in a position to make the requested corrections...

- [3] On July 27, 2020, the parent who submitted the correction request to SGI contacted my office to discuss the matter and provided written authorization to act as a surrogate on behalf of their son whose personal health information was at issue.
- [4] On July 29, 2020, the surrogate filed a request for review with my office regarding SGI's decision to not correct the personal health information and its decision to place a notation on file instead.
- [5] On August 25, 2020, my office provided notification to the surrogate and SGI, that my office would be conducting a review of SGI's decision. My office asked both parties to provide submissions by September 25, 2020.

## **II RECORDS AT ISSUE**

- [6] The Applicant requested 106 corrections to information on the injury claim file.

## **III DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction?**

- [7] SGI is a "government institution" as defined in subsection 2(1)(d)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and is therefore subject to FOIP as it relates to "personal information".
- [8] SGI is also a "trustee" as defined in subsection 2(t)(i) of *The Health Information Protection Act* (HIPA).

[9] In its submission to my office, SGI asserted that the information in question was collected for purposes of Part VIII of AAIA. Further, that HIPA did not apply in this case pursuant to subsection 4(4)(b) of HIPA. SGI stated:

The exemption that is outlined at section 4(4)(b) however makes it clear that Parts II, IV, and V of HIPA do not apply to the information that is collected pursuant to Part VIII of the AAIA. Consequently, the OIPC does not have the jurisdiction to make findings or recommendations on SGI's practices where it relates to these parts of the legislation.

[10] Subsection 4(4)(b) of HIPA removes Parts II, IV and V of HIPA from applying to personal health information that has been collected, used or disclosed where that information was obtained for the purpose of Part VIII (Bodily Injury Benefits) of the AAIA. Subsection 4(4)(b) of HIPA provides:

4(4) Subject to subsections (5) and (6), Parts II, IV and V of this Act do not apply to personal health information obtained for the purposes of:

...  
(b) Part VIII of *The Automobile Accident Insurance Act*;  
...

[11] I note that the right of amendment at section 40 of HIPA is found in Part V of HIPA.

[12] The AAIA is the primary enabling legislation for SGI. Part VIII of the AAIA sets out the process for SGI to deal with managing compensation claims arising from motor vehicle accidents.

[13] The information and records at issue involve the surrogate's son who was injured in a motor vehicle accident in 2015. Due to the accident, the surrogate and their son made a claim to SGI for injury benefits.

[14] The information and records at issue in this matter are clearly related to the injury claim. Therefore, I find that the information and records at issue in this case were obtained by SGI for the purposes of Part VIII of the AAIA.

- [15] As such, I find that Part VIII of the AAIA applies in this case, and therefore, HIPA does not apply because the right of correction is found in Part V of HIPA.
- [16] In its submission to my office, SGI advised that in its response to the request for correction it mistakenly cited FOIP. However, it indicated that upon further consideration of the records, SGI determined that HIPA was the appropriate legislation.
- [17] It should be noted however that subsection 4(3) of HIPA provides that FOIP, unless where otherwise provided, does not apply to personal health information in the custody or control of a trustee. Subsection 4(6) of HIPA provides that FOIP applies to an enactment mentioned in subsection 4(4) of HIPA unless FOIP provides that the enactment or any provision in the enactment is not subject to FOIP or *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations). Part VIII of the AAIA is not listed as an enactment or part thereof that prevails over FOIP at subsection 23(3) of FOIP.
- [18] It should be noted that subsection 24(1.1) of FOIP provides that “personal information” does not include information that constitutes personal health information as defined in HIPA. The purpose of subsection 24(1.1) of FOIP is to ensure that two different laws do not apply to the same information at the same time. The practical effect of subsection 24(1.1) is that if personal health information is in the custody or control of a trustee and therefore subject to HIPA, it cannot simultaneously be personal information subject to FOIP. The purpose of the Legislative Assembly in enacting subsection 24(1.1) was presumably to avoid duplication in legislative coverage, not to create a void where no privacy law applied to the information collected, used and disclosed by SGI in the course of its work under the AAIA. Although, some parts of HIPA do apply to SGI in the course of its work under the AAIA, those parts are not at issue in this case. To deny the important rights of Saskatchewan residents prescribed by FOIP and HIPA would warrant clear and unambiguous language that evidenced that the Assembly had turned its mind to such a result. The obvious and appropriate place to do so would have been in the prevailing provisions in section 23 of FOIP or in section 12 of the FOIP Regulations, (Review Report F-2012-005 at paragraph [31]). Clearly there is a gap here that requires a legislative

amendment to correct, as in this case both the provisions regarding correction in HIPA and FOIP do not apply.

[19] A similar long standing issue existed with personal information and personal health information collected by the Saskatchewan Workers' Compensation Board (WCB) for purposes of sections 172 and 174 of *The Workers Compensation Act, 2013*. However, this issue was resolved by the Legislative Assembly when it amended FOIP and included a provision which clearly provides that personal health information in the possession or control of the WCB is personal information for the purposes of FOIP (subsection 24(1.2) of FOIP).

[20] I can find no compelling public policy purpose or basis for SGI to continue to be exempt from, or have a special position with respect to, the legislation and administration when it comes to access or correction rights that applies to other public bodies in Saskatchewan.

[21] Therefore, I recommend that SGI request the Minister of Justice to amend subsection 24(1.2) of FOIP to also include personal health information in the possession or control of SGI. I also recommend the Minister of Justice amend subsection 24(1.2) of FOIP to include personal health information in the possession or control of SGI.

[22] Nonetheless, in regards to the amendment request, I recommend that SGI take no further action.

#### **IV FINDINGS**

[23] I find that the information and records involved in this case were obtained by SGI for the purpose of Part VIII of the AAIA.

[24] I find that Part VIII of the AAIA applies instead of provisions in Part V of HIPA, which includes the right of correction at section 40.

[25] I find that HIPA does not apply in this case.

[26] I find that FOIP does not apply in this case.

## **V RECOMMENDATIONS**

[27] Regarding the correction request, I recommend that SGI take no further action.

[28] I recommend that SGI request the Minister of Justice to amend subsection 24(1.2) of FOIP to include personal health information in the possession or control of SGI.

[29] I recommend the Minister of Justice to amend subsection 24(1.2) of FOIP to include personal health information in the possession or control of SGI.

Dated at Regina, in the Province of Saskatchewan, this 3<sup>rd</sup> day of February, 2021.

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