



REVIEW REPORT 185-2015

Saskatchewan Government Insurance

November 13, 2015

Summary: The Applicant requested records from Saskatchewan Government Insurance (SGI). SGI responded to the Applicant providing access to some responsive records and indicated that no further responsive records existed. Upon review, the Commissioner found that SGI had conducted a reasonable search for any further responsive records.

I BACKGROUND

[1] On August 14, 2015, Saskatchewan Government Insurance (SGI) received an access to information request from the Applicant for:

1 – The study conducted by S.G.I. Vehicle Standards to amend the Traffic Safety Act in respect to excessive motor vehicle noise levels.

2 – Statistics on S.G.I. claims for hearing loss from loud vehicles/airbags.

3 – Statistics on the percentage of injury claims submitted and subsequently reviewed and rejected by Western Medical Assessments.

[2] SGI responded to the request by a letter dated September 8, 2015 indicating that access to the requested information was partially granted. In addition, SGI indicated that records responsive to #1 and #3 of the Applicant's request do not exist. SGI cited subsection 7(2)(e) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On October 5, 2015, my office received a Request for Review from the Applicant. The Applicant takes issue with SGI claiming that no records exist.

[4] On October 7, 2015, my office notified SGI and the Applicant of our intention to undertake a review. A submission was received from SGI on October 16, 2015. A submission was received from the Applicant on October 26, 2015.

[5] On October 20, 2015, SGI advised my office that it had located two pages that would be responsive to #1 of the Applicant's access to information request. SGI intended to release the pages to the Applicant. My office was copied on SGI's letter to the Applicant. On October 26, 2015, the Applicant indicated he received the letter and two pages of records from SGI and still felt that SGI should have more.

II RECORDS AT ISSUE

[6] SGI has asserted that no responsive records exist within its possession and/or control that are responsive to #1 and #3 of the Applicant's access to information request. Therefore, the focus of this review is on the search efforts conducted by SGI.

III DISCUSSION OF THE ISSUES

[7] SGI is a "government institution" as defined in subsection 2(1)(d)(ii) of FOIP.

1. Did SGI conduct a reasonable search?

[8] Section 5 of FOIP provides the right of access as follows:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a government institution.

[9] Section 5 is clear that access can be granted provided the records are in the possession or under the control of the government institution. FOIP does not require a government institution to prove with absolute certainty that records do not exist. It must however, demonstrate that it has made a reasonable effort to identify and locate responsive records.

- [10] A *reasonable search* is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request. The threshold that must be met is one of “reasonableness”. In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable.
- [11] The level of detail that can be provided to my office is outlined in my office’s resource, IPC Guide to Exemptions. Each case requires different search strategies and details depending on the nature of the records and the way an organization manages them.
- [12] With regards to records related to #1 of the access to information request, the Applicant asserted in his submission that the two pages released to him by SGI refer to a 2004 testing program to assist law enforcement. In addition, there is also reference to a proposal for a standard to regulate excessive motorcycle noise. The Applicant asserted that there must have been research into this and a reason for implementing this in the first place. Further, the pages reference a meeting in April 2010 about a report and strategy. The Applicant asserted that this suggests there are more records.
- [13] However, I note that the Applicant asked for “The study conducted by S.G.I. Vehicle Standards to amend the Traffic Safety Act in respect to excessive motor vehicle noise levels.” That is very specific. In fact, SGI was not even required to provide the additional pages to the Applicant as they are not technically responsive to his access to information request. SGI provided my office with a copy of the two pages released to the Applicant. After reviewing them, I am not persuaded that the pages suggest that the report requested by the Applicant indeed exists. In fact, page two states “[t]his enforcement effort was abandoned...”
- [14] In its submission, SGI outlined its search efforts for records related to #1 of the access to information request. This included a search of the Vehicle Standards and Inspections unit. No additional records were found except for the two pages released to the Applicant during this review. SGI acknowledged that the two pages reference an informal testing program that was briefly entertained in 2004, and was subsequently abandoned. SGI asserted that no official study was conducted and that is why no documents were located

earlier. Three separate employees were involved in determining whether there were any further responsive records: a current manager, a former manager and a 20 year employee all of whom worked in the Vehicle Standards and Inspections unit and were familiar with records in this area. In addition, SGI's legislative advisor for the past 20 years is not aware of any study regarding amending *The Traffic Safety Act* to address the issue of excessive motor vehicle noise.

[15] With regards to records related to #3 of the access to information request, the Applicant asserted in his submission that the information should be available on the computer system that SGI uses at the "push of a button".

[16] SGI asserted in its submission that this type of information is not collected or tracked so no records exist. SGI confirmed this was the case with four separate employees within Head Office Claims: two Injury Managers, the Acting Vice President of Rural Claims and the Manager of Rehabilitation. All confirmed that this type of information is not collected or tracked by SGI. SGI explained that Head Office Claims is the only office this type of information would be located in. SGI asserted that, at best, it could simply advise on the number of files referred to Western Medical Assessment but outcomes are not tracked.

[17] In conclusion, I find that SGI has detailed its search efforts and outlined the reasons why the records do not exist. The threshold that must be met is one of "reasonableness". Based on what has been provided to my office, I find that SGI has demonstrated that its search for records responsive to the Applicant's access to information request was reasonable and adequate for purposes of FOIP.

IV FINDINGS

[18] I find that SGI has demonstrated that its search for records responsive to the Applicant's access to information request was reasonable and adequate for purposes of FOIP.

V RECOMMENDATIONS

[19] There are no recommendations to be made at this time as I am satisfied with the efforts made by SGI in this circumstance.

Dated at Regina, in the Province of Saskatchewan, this 13th day of November, 2015.

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