



## **REVIEW REPORT 186-2015**

### **Saskatchewan Government Insurance**

**January 13, 2016**

**Summary:** The Applicant requested records from Saskatchewan Government Insurance (SGI) regarding his claim file. SGI provided partial access to responsive records but withheld portions pursuant to subsections 15(1)(d), 17(1)(b)(i), 18(1)(f), 22(a) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Upon review, the Commissioner found that SGI appropriately applied subsections 17(1)(b)(i), 18(1)(f) and 22(a) of FOIP to the record. The Commissioner recommended SGI continue to withhold the information in the record.

#### **I BACKGROUND**

[1] On May 22, 2015, Saskatchewan Government Insurance (SGI) received an access to information request from the Applicant for:

All information regarding file # [removed] from May 12, 2011 until current.

[2] SGI responded to the request by a letter dated October 1, 2015 indicating that access to the information 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), 18(1)(f), 22(a) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On October 13, 2015, my office received a Request for Review from the Applicant. On October 14, 2015, the Applicant advised my office that he was not interested in the

information withheld by SGI pursuant to subsection 29(1) of FOIP. Therefore, this review will not address that subsection.

[4] My office notified SGI and the Applicant of our intention to undertake a review on October 15, 2015. On November 27, 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 record appears to be 97 pages, not including copies.

## 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 17(1)(b)(i) of FOIP to the withheld record in question?

[7] Subsection 17(1)(b) 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;

[8] This provision is meant to permit government institutions to consider options without constant public scrutiny.

[9] 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.

- [10] 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.
- [11] 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.
- [12] SGI noted in its submission that the severed information on the following pages could be released: P022, P023, P037, P066, P070, P079, P718, P1620, P2565, P2566, P4127, P4130, P4161, P5063 and P5187. Therefore, we will not address the information severed under subsection 17(1)(b)(i) of FOIP on these pages. I trust SGI will be releasing it. Pages P022 and P1620 have other information severed pursuant to subsections 18(1)(f) and 29(1) of FOIP therefore these pages will be considered further in this Review Report.
- [13] From a review of the remaining pages withheld under this subsection, they constitute injury claim summary sheets, draft letters, requests for reviews by medical consultants, summaries for an appeal, interoffice memos and handwritten notes. In its submission, SGI explained the nature of the information on the pages and identified the employees involved. For example, page P005 is an injury claim summary sheet internal to SGI. SGI severed a paragraph on the page contained within correspondence between two managers and SGI’s legal counsel. The paragraph outlines both consultations and deliberations that had previously occurred between the managers and legal counsel. In my view, this fits within the definitions of consultations and deliberations and would qualify for exemption pursuant to subsection 17(1)(b)(i) of FOIP.
- [14] From a review of the information on the pages withheld by SGI under this subsection, I note similar types of consultations and deliberations. Therefore, I find that the following pages qualify for exemption pursuant to subsection 17(1)(b)(i) of FOIP: P004, P005, P007, P008, P009, P010, P011, P014, P031, P032, P044, P045, P047, P051, P063, P078,

P082, P133, P169, P170, P186, P1000, P1007, P1008, P1010, P1011, P1653, P1654, P1904 to P1908, P2271, P2275, P2282, P2336, P2338 to P2342, P2410, P2437, P2438, P2439 to 242441, P2466, P2531, P2532, P2533, P2534, P2584, P3599, P3600, P3613, P3614, P4148, P4642, P4665, P4666, P4698, P5023, P5245, P5252, P5261, P5341, P5348 and P5371.

[15] Pages P004 and P1620 have other information severed by SGI pursuant to other subsections of FOIP. Therefore, these pages will be considered further in this Review Report.

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

[16] 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;

[17] For this provision to apply there must be objective grounds for believing that disclosing the information would result in the harm alleged. The public body does not have to prove that a harm is probable, but needs to show that there is a “reasonable expectation of harm” if any of the information were to be released.

[18] A harms test is a set of criteria used to determine whether disclosure of records or information could reasonably be expected to cause harm to a particular interest. The test is as follows:

- i. There must be a clear cause and effect relationship between the disclosure and the harm which is alleged;
- ii. The harm caused by the disclosure must be more than trivial or inconsequential; and

iii. The likelihood of harm must be genuine and conceivable.

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

[20] *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.

[21] There are five pages to address which SGI applied subsection 18(1)(f) of FOIP to. All five pages have a portion of information severed with the remainder having been released to the Applicant.

[22] In its submission, SGI asserted that the information severed on the pages was General Insurance System (GIS) Reserving notations. From a review of the information severed on pages P003, P004, P022, P054 and P5186 it is clear the information is as described by SGI. The Commissioner has found previously that this type of information qualifies for exemption pursuant to subsection 18(1)(f) of FOIP (see Review Report 098-2015 and 187-2015). Therefore, I find that SGI appropriately applied subsection 18(1)(f) of FOIP to the information on these pages.

**3. Did SGI properly apply subsection 22(a) of FOIP to the withheld record in question?**

[23] Subsection 22(a) of FOIP is a discretionary exemption and provides:

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

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

...

[24] Subsection 22(a) is specifically meant to protect information that is subject to solicitor-client privilege. In *R. v. Solosky* (1979), Justice Dickson considered 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.

[25] 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.

[26] SGI applied subsections 22(a) of FOIP to information on five pages: P013, P020, P028, P2585 and P5175. From a review of these pages, they constitute injury claim summary sheets and interoffice memos. SGI severed the information pursuant to subsection 22(a) of FOIP and released the remainder of the pages. In its submission, SGI asserted that the information severed on the pages contained communications between SGI’s legal counsel and various SGI employees and constituted legal advice.

[27] *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.

[28] Based on this and from reviewing the severed information on the pages, I agree with SGI that the information withheld constitutes communications between SGI’s legal counsel and SGI employees and constitutes legal advice. Therefore, the first two parts of the test have been met.

[29] With regards to confidentiality, 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.

[30] SGI did not address the issue of confidentiality in its submission. However, based on a review of the information, legal counsel is being frank in its communication. The content is such that confidentiality would be implied between the parties.

[31] As all three parts of the test have been met, I find that subsection 22(a) of FOIP was appropriately applied by SGI. The information on pages P013, P020, P028, P2585 and P5175 should continue to be withheld.

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

[32] SGI applied subsection 29(1) of FOIP to five pages of the record: P1212, P1254, P1620, P1882 and P1883. SGI severed what it determined was personal information of individuals other than the Applicant.

[33] From a review of pages P1212, P1254, P1882 and P1883, SGI severed personal information concerning the Applicant's family. However, SGI indicated that it was prepared to release this information as it was the Applicant who provided it to SGI if my office agreed. I agree the personal information can be released.

[34] From a review of the page P1620, SGI severed information pertaining to the physical health of individuals involved in a motor vehicle accident. SGI indicated that the information constituted personal health information pursuant to *The Health Information Protection Act* (HIPA). Further, SGI argued that it was not obligated to comply with Part IV of HIPA. SGI determined that it was withholding the information as there was no requirement for disclosure.

[35] Subsection 4(4)(b) of HIPA provides that Parts II, IV and V of HIPA do not apply to personal health information obtained for the purposes of Part VIII of *The Automobile Accident Insurance Act* which deals with bodily injury benefits. As such, neither FOIP

nor HIPA obligate SGI to withhold or release the personal health information on page P1620.

[36] As all of the pages have been addressed, there is no need to consider subsection 15(1)(d) of FOIP. It is also not necessary to address the new discretionary exemption raised by SGI in its submission, subsection 22(b) of FOIP.

#### **IV FINDINGS**

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

#### **V RECOMMENDATIONS**

[38] I recommend that SGI continue to withhold the severed information on the record but I note that SGI offered to provide certain information that was severed in the record to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 13<sup>th</sup> day of January, 2016.

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