



REVIEW REPORT 187-2015

Saskatchewan Government Insurance

November 23, 2015

Summary:

The Applicant requested records from Saskatchewan Government Insurance (SGI) regarding his insurance claim files. SGI provided partial access to responsive records but withheld portions pursuant to subsections 15(1)(d), 17(1)(b)(i), (iii), 18(1)(f), 22(a) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). In addition, SGI deemed some information in the record as not responsive to the Applicant's access request. Upon review, the Commissioner found that the information in the record was responsive. Further, that SGI appropriately applied subsections 17(1)(b)(i), (iii), 18(1)(f), 22(a) and 29(1) of FOIP to the record. The Commissioner recommended SGI release some of the portions of the record found to be responsive and withhold the remainder of the record.

I BACKGROUND

[1] On November 26, 2014, Saskatchewan Government Insurance (SGI) received an access to information request from the Applicant for:

All documents and verbal transactions regarding insurance claims [numbers removed] including legal depart. files

[2] SGI responded to the request by a letter dated February 2, 2015 indicating that access to the requested 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), (iii),

18(1)(f), 22(a) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On October 6, 2015, my office received a Request for Review from the Applicant.

[4] My office notified SGI and the Applicant of our intention to undertake a review on October 8, 2015. On November 12, 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 at issue totals 310 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. Do the records contain information responsive to the Applicant’s access to information request?

[7] SGI severed some of the information in the record indicating that the information was not responsive to the Applicant’s access to information request. For the information, SGI noted various subsections of FOIP to justify withholding the information should my office find the information responsive.

[8] On November 16, 2015, my office contacted the Applicant to determine whether he wanted my office to review the information deemed “not responsive” by SGI. The Applicant advised that he wanted this included.

[9] When a public body receives an access to information request, it must determine what information is responsive to the request. *Responsive* means relevant. The term describes anything that is reasonably related to the request. It follows that any information or

records that do not reasonably relate to an Applicant's request will be considered "not-responsive".

[10] The request itself will set out the boundaries of relevancy and will circumscribe the records or information that will ultimately be identified as being responsive. The purpose of FOIP is best served when a public body adopts a liberal interpretation of the request.

[11] The following pages had information severed as "not responsive": P1635, P1869, P1870, P1879, P1919, P1921, P1923, P2020, P2026, P2027, P2093, P2099, P2105, P2106, P2137, P2142, P2150, P2152, P2154, P2156, P2158, P2160, P2162, P2164, P2167, P2210, P2216, P2217, P2347, P2350, P2352 and P2354. The pages are email chains. Some of the emails are internal to SGI, some involve a contractor and some involve the Applicant.

[12] The information deemed as not responsive in these emails relates to the contractor hired by the Applicant to complete work. From a review of the correspondence, there appears to have been issues related to payment of invoices submitted by the contractor to SGI.

[13] The Applicant has requested documents regarding his two insurance claim files. A public body can remove information as not responsive only if the Applicant has requested specific information, such as his or her own personal information. The public body may treat portions of a record as not responsive if they are clearly separate and distinct and entirely unrelated to the Applicant's request.

[14] In this case, the information is related to the Applicant's claim files. For example, on page P1919, SGI severed a portion of an internal email that discusses payment of the invoice related to the Applicant's file including how to handle the lien placed on the Applicant's home by the contractor. The Applicant's name and file numbers are in the subject line of the email. Other emails relate more broadly to all of the claims the contractor is involved with and how SGI intends to handle the issues with the contractor. However, included in those claims are the Applicant's.

[15] Based on this, I find that all of the information in the pages noted above is responsive to the Applicant's request. On some of the pages, SGI cited exemptions to withhold the information in the event my office found the information responsive. I will deal with those pages in the next sections of this Review Report. However, the information on the following pages have no exemptions cited and should be released: P1635, P1869, P1870, P1879, P2142, P2150, P2152, P2154, P2156, P2158, P2160, P2162, P2164, P2167, P2347, P2350, P2352 and P2354. All of these pages, except P1869, have other information severed under subsections 17(1)(b)(i) and 29(1) of FOIP. I will address this information in the next sections of this Review Report.

2. Did SGI properly apply subsection 17(1)(b) of FOIP to the withheld record in question?

[16] 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;
- (ii) a member of the Executive Council; or
- (iii) the staff of a member of the Executive Council;

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

[18] 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.

[19] 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.

[20] 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.

[21] SGI applied subsections 17(1)(b)(i) and (iii) of FOIP to portions of the record. The majority of the record is being withheld by SGI pursuant to this subsection. From a review of the pages, they constitute internal emails and general claim summary sheets. In its submission, SGI explained the nature of the information on the pages, the consultations and deliberations occurring and the roles of the employees involved. For example, page P024 is a general claim summary sheet internal to SGI. SGI severed two portions of the page citing subsection 17(1)(b)(i) of FOIP. SGI explained that this page contained an email from a manager to a vice president outlining a plan for handling the claim. The purpose of the email was to ensure the vice president approved and to seek additional comments or concerns. In my view, this would fit the definition of a consultation.

[22] From a review of other pages withheld by SGI under this subsection, I note that severed information is repeated numerous times over several pages. This is largely because the pages constitute email chains. I also note that similar types of consultations appear on these pages. Therefore, I find that the following pages qualify for exemption pursuant to subsection 17(1)(b) of FOIP: P044, P927, P1259, P1356 to P1360, P1365 to P1367, P1373, P1376, P1377, P1380 to P1382, P1394, P1395, P1462, P1485, P1486, P1488, P1491, P1495, P1499, P1500, P1503, P1504, P1508, P1509, P1514, P1515, P1522, P1525, P1530, P1531, P1535, P1536, P1542, P1548, P1549, P1558, P1561, P1564, P1565, P1571, P1572, P1575, P1576, P1579 to P1581, P1588, P1589, P1594, P1595, P1609, P1610, P1612, P1615 to P1617, P1621, P1622, P1625, P1626, P1698, P1727 to P1730, P1732, P1736, P1737, P1740, P1741, P1747, P1748, P1755, P1756, P1767, P1768, P1774, P1775, P1781, P1782, P1789, P1790, P1801, P1803, P1806, P1815, P1816, P1819, P1820, P1823, P1824, P1831, P1832, P1838, P1839, P1844, P1852 to P1854, P1856, P1857, P1860 to P1865, P1876, P1877, P1881, P1886, P1887, P1919,

P1921, P1923, P1936 to P1939, P1943, P1948, P1953, P1954, P1961, P1962, P1990, P1991, P1995, P1998, P2002, P2007, P2008, P2020, P2026, P2027, P2060, P2065, P2068, P2070, P2093, P2099, P2105, P2106, P2125, P2137, P2143, P2150, P2152, P2154, P2165, P2166, P2168, P2169, P2175 to P2178, P2184, P2210, P2216, P2217, P2223, P2227, P2231, P2249, P2252, P2256, P2260, P2261, P2264, P2268, P2269, P2273, P2274, P2277, P2278, P2281 to P2283, P2286 to P2288, P2291 to P2293, P2299 to P2301, P2305 to P2307, P2311, P2312, P2317, P2322, P2326, P2330, P2334, P2338, P2342, P2348, P2350 and P2352.

[23] Pages P044, P927, P1369, P1371, P1374, P1378, P1383, P1554, P1556, P1559, P1562, P1566, P1573, P1577, P1582, P1619, P1623, P1635, P1799, P1804, P1807, P1817, P1821, P1825, P1875, P1880, P2154, P2156, P2158, P2159, P2160, P2161, P2162, P2163, P2164, P2296 and P2354 also qualify for exemption under subsection 17(1)(b) of FOIP. These pages have other information severed under subsections 29(1) and 22(a) of FOIP. I will deal with these pages further in the next sections of this Review Report.

[24] Pages P396 to P408, P481 to P482, P1168 to P1170, P1172 to P1177 and P2057 to P2058 are copies of letters in draft format. On some pages, there are edits visible. In its submission, SGI indicates that some of the letters are draft settlement letters. Another letter is a draft letter to the contractor. SGI asserted that all of the letters were circulated to various staff involved to ensure they reflected SGI's approach. SGI asserted that the edits to these draft letters were the products of consultation. I agree with SGI. The draft letters qualify for exemption pursuant to subsection 17(1)(b)(i) of FOIP.

[25] Pages P2013 to P2014 and P2134 to P2135 are drafts of a briefing note. SGI asserted that the drafts were circulated for comments from staff to ensure accuracy and appropriate communication. I agree with SGI that the draft briefing notes qualify for exemption pursuant to subsection 17(1)(b) of FOIP.

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

[26] SGI applied subsection 29(1) of FOIP to a number of pages of the record. SGI severed what it determined was personal information of individuals other than the Applicant. My office contacted the Applicant on November 17, 2015, and was advised that he was not interested in the personal information of other individuals unless the information related to his claim files. The Applicant indicated that he was not interested in the names and addresses of other individuals.

[27] From a review of pages P1628, P2061, P2161 and P2163 the only information severed are the names of other individuals and their home addresses. As the Applicant is not interested in this information, I will not address these pages.

[28] When dealing with information in a record that appears to be personal information, the first step is to confirm the information indeed qualifies as personal information pursuant to section 24 of FOIP. Once identified as personal information, a decision needs to be made by the public body whether to release it or not pursuant to section 29 of FOIP.

[29] All of the pages being dealt with under subsection 29(1) of FOIP constitute emails and general claim summary sheets. For pages P1635, P1634, P1870, P1878, P1879, P2072, P2073, P2074, P2078, P2079, P2112, P2142, P2149, P2151, P2153, P2154, P2156, P2155, P2157, P2158, P2160, P2159, P2162, P2164, P2167 and P2354 SGI severed the names of other individuals, their home addresses and the amount of the invoice for work done by the contractor. It should be noted that the same information is repeated and severed on all of these pages.

[30] These data elements constitute personal information pursuant to subsections 24(1)(b), (e) and k(i) of FOIP. These subsections provide:

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;

...

(k) the name of the individual where:

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

[31] 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 relates except in accordance with this section or section 30.

[32] As such, the personal information of these individuals should continue to be withheld. Pages P2073 and P2078 have other information severed as well. For example, on page P2073, additional information of a financial nature regarding one individual's property is severed. Again, this type of information would constitute personal information pursuant to subsection 24(1)(b) of FOIP and should be withheld pursuant to subsection 29(1) of FOIP. The same information is repeated and severed on pages P2078. The same sentence is repeated and severed on pages P1369, P1371, P1374, P1378, P1383, P1554, P1556, P1559, P1562, P1566, P1573, P1577, P1582, P1619, P1623, P1799, P1802, P1804, P1807, P1817, P1821, P1825 and P2296. The sentence pertains to financial matters of another individual who is not the Applicant. As such, it also constitutes personal information pursuant to subsection 24(1)(b) of FOIP and should continue to be withheld pursuant to subsection 29(1) of FOIP.

[33] The severed information on pages P044, P927, P2346, P2347, P2349, P2351 and P2353 also constitutes personal information of other individuals because it pertains to financial matters involving these individuals. As such, it constitutes personal information pursuant to subsection 24(1)(b) of FOIP and should continue to be withheld pursuant to subsection 29(1) of FOIP.

[34] Finally, page P2124 has a sentence severed which pertains to an event of a personal nature involving an identifiable individual who is not the Applicant. This would constitute personal information pursuant to subsection 24(1)(k)(i) of FOIP and should continue to be withheld pursuant to subsection 29(1) of FOIP.

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

[35] 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;

[36] 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.

[37] 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.

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

[39] *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.

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

[41] In its submission, SGI asserted that the severed information is about its General Insurance System (GIS) Reserving notations. The reserving information is the process by which all insurance companies value the potential liability of a claim and track expenditures. Reserving is a reflection of the possible (not actual) value of the claim either at the time the reserve is established or periodically reviewed. It is not an accurate reflection of the value of the claim and the release of this information has the potential to undermine SGI's ability to negotiate fairly with the customer.

[42] Review Report 098-2015 also involved SGI and its reserve amounts. In that case, the Commissioner found that this type of information qualified for subsection 18(1)(f) of FOIP. This is the same type of information in this case. Therefore, I find that subsection 18(1)(f) of FOIP applies to the severed information on pages P002, P136, P166, P506, P620, P826 and P924. This information should continue to be withheld.

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

[43] 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;

...

- [44] Subsection 22(a) is specifically meant to protect information that is subject to solicitor-client privilege. In *R. v. Solosky* (1979), Justice Dickson regarded 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.
- [45] 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.
- [46] SGI applied subsections 22(a) of FOIP to two remaining pages; P1875 and P1880. From a review of these pages, they are copies of the same email. In its submission, SGI asserted that the email is from SGI’s legal counsel to claims staff. SGI clarified what the email was about.
- [47] *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.
- [48] Based on this and from reviewing the severed information, the information withheld would constitute legal advice being given by legal counsel to claims staff.
- [49] 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.

[50] 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.

[51] 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 P1875 and P1880 should continue to be withheld.

[52] As all of the pages have been addressed, there is no need to consider subsection 15(1)(d) of FOIP.

[53] The findings and recommendations of this Review Report were shared with SGI on November 20, 2015. SGI responded indicating that it would comply with the recommendations.

IV FINDINGS

[54] I find that the information severed in the record and deemed not responsive by SGI is responsive to the Applicant's access to information request.

[55] I find that SGI appropriately applied subsections 17(1)(b)(i), 29(1), 18(1)(f) and 22(a) of FOIP to the records in question.

V RECOMMENDATIONS

[56] I recommend that SGI release page P1869 and the information severed and withheld as not responsive on pages P1635, P1869, P1870, P1879, P2142, P2150, P2152, P2154, P2156, P2158, P2160, P2162, P2164, P2167, P2347, P2350, P2352 and P2354.

[57] I recommend that SGI continue to withhold the severed information on the remainder of the record.

Dated at Regina, in the Province of Saskatchewan, this 23rd day of November, 2015.

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