



## **REVIEW REPORT 197-2016**

### **Saskatchewan Government Insurance**

**October 20, 2016**

#### **Summary:**

The Applicant submitted an access to information request to Saskatchewan Government Insurance (SGI) for copies of all proposals submitted in response to a Request for Proposals (RFP) by SGI. SGI refused the Applicant access to the responsive records pursuant to subsections 19(1)(a), 19(1)(b), and 19(1)(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant appealed to the Office of the Information and Privacy Commissioner (IPC). The IPC found that subsection 19(1)(b) of FOIP applies to the records and recommended that SGI continue to withhold the records.

#### **I BACKGROUND**

[1] On May 25, 2016, Saskatchewan Government Insurance (SGI) received an access to information request from the Applicant for:

...copies of all proposals submitted in response to Request for Proposals #RFP/30/14, Saskatchewan's Ignition Interlock Program. 16 July 2014 through 25 August 2014

[2] On June 28, 2016, SGI sent a letter to the Applicant advising that the requested information contained third party information and that it has notified the third parties of the request.

[3] In a letter dated July 25, 2016, SGI advised the Applicant that it had received representations from the third parties and that it was denying access to the records

pursuant to subsections 19(1)(a), 19(1)(b) and 19(1)(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[4] On August 9, 2016, my office received a Request for Review from the Applicant. On August 15, 2016, my office provided the Applicant and SGI with notice of its intention to undertake a review.

[5] On August 18, 2016, my office notified the three third parties - Smart Start Inc. (Smart Start), and on August 19, 2016, Alcolock (Alcolock) and Draeger Safety Canada Ltd. (Draeger) - of my office's review.

## **II RECORDS AT ISSUE**

[6] The records at issue are proposals submitted by the three third parties in response to SGI's Request for Proposals (RFP). In total, there are 1211 pages of responsive records.

## **III DISCUSSION OF THE ISSUES**

[7] SGI is a "government institution" pursuant to subsection 2(1)(d)(ii) of FOIP.

### **1. Did SGI properly apply subsection 19(1)(b) of FOIP to the withheld records in question?**

[8] Subsection 19(1)(b) of FOIP is a mandatory exemption and provides:

19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

...

(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution by a third party;

[9] Subsection 19(1)(b) of FOIP is meant to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.

[10] All three parts of the following test must be met in order for subsection 19(1)(b) of FOIP to apply:

- i. The information in question must qualify as financial, commercial, scientific, technical or labour relations information;
- ii. The information must have been supplied by the third party; and
- iii. The information must have been supplied in confidence either implicitly or explicitly

[11] SGI applied subsection 19(1)(b) of FOIP to all of the 1211 pages of responsive records.

**i. Is the information in question financial, commercial, scientific, technical or labour relations information?**

[12] Pages 1 to 387 constitute the proposal submitted by Draeger to SGI. In its submission, Draeger asserted the pages contain confidential commercial information.

[13] Pages 388 to 975 constitute the proposal submitted by Smart Start to SGI. In its submission, Smart Start referenced my office's Review Report 031-2015, in which the same records were at issue. Smart Start referred my office to its submission it provided for that review and stated it was relying on the same arguments. It argues that its proposal contains financial, commercial, scientific/technical, or labour relations information.

[14] Pages 976 to 1211 constitute the proposal submitted by Alcolock to SGI. In its submission, Alcolock asserts that these pages contain sensitive business information. It referred my office to its letter to SGI, which outlines its reasons for objecting to the release of these pages. In its letter to SGI, Alcolock states that the pages contain financial, commercial, scientific, technical or labour relations information that was supplied in confidence to SGI.

[15] Definitions of financial, commercial, scientific, technical, and labour relations information are below.

- [16] *Financial information* relates to money and its use or distribution and must contain or refer to specific data. Examples of “financial” information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.
- [17] *Commercial information* is information relating to the buying, selling or exchange of merchandise or services. As noted in my office’s Review Report 031-2015, British Columbia IPC Order F05-09 provided a number of types of information which its jurisdiction considered to be included in the definition of commercial information are as follows:
- a. Offers of products and services a third-party business proposes to supply or perform;
  - b. A third-party business’s experiences in commercial activities where this information has commercial value;
  - c. Terms and conditions for providing services and products by a third party;
  - d. Lists of customers, suppliers or sub-contractors compiled by a third-party business for its use in its commercial activities or enterprises; such lists may take time and effort to compile, if not skill;
  - e. Methods a third-party business proposes to use to supply goods and services; and
  - f. Number of hours a third-party business proposes to take to complete contracted work or tasks.
- [18] *Scientific information* is information belonging to an organized field of knowledge in the natural, biological or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypothesis or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning separate from technical information.
- [19] *Technical information* is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. It will usually involve information prepared by a professional in the field and describe the construction,

operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information.

[20] *Labour relations information* is information that relates to the management of personnel by a person or organization, whether or not the personnel are organized into bargaining units. It includes relationships within and between workers, working groups and their organizations as well as managers, employers and their organizations. Labour relations information also includes collective relations between a public body and its employees. Common examples of labour relations information are hourly wage rates, personnel contracts and information on negotiations regarding collective agreements.

[21] When I review the records, I find that it contains commercial information. The information in the proposals relate to the buying or selling of goods and services. Therefore, I find that the entire proposal packages submitted by the third parties constitute third party commercial information.

**ii. Was the information supplied by the third parties to the government institution?**

[22] Information may qualify as “supplied” if it was directly supplied to a government institution by a third party.

[23] Pages P001 to P1211 were clearly supplied by the three third parties. The front pages of each of the three proposals indicate that each third party supplied the proposal to SGI. For example, page P001 is a letter that states that Draeger is submitting the proposal to SGI. Page P388 is the cover page for the Smart Start’s proposal and indicates that Smart Start is supplying the proposal to SGI in response to SGI’s Request for Proposals (RFP). Page P976 is the cover page to Alcolock’s proposal and indicates that Alcolock is supplying the proposal to SGI in response to SGI’s RFP.

[24] I find that the responsive records were supplied by the three third parties to SGI.

**iii. Was the information supplied in confidence implicitly or explicitly?**

[25] SGI's RFP contained the following statement:

Submitted proposals will be considered to be the property of SGI and will not be returned. The information contained in the proposals will be treated in strictest confidence and shall not be used for a purpose other than the purpose for which it was submitted without the express written permission of the proponent. However, government reporting requirements may result in the public disclosure of dollars paid to the successful proponent from any contract awarded.

[26] Based on the above, there would have been a mutual understanding between SGI and the third parties that the information was being supplied explicitly in confidence.

[27] Since all three parts of the test for subsection 19(1)(b) of FOIP have been met, I find that SGI appropriately withheld the information. Since subsection 19(1)(b) of FOIP applies to all of the pages, I will not consider subsections 19(1)(a) or 19(1)(c) of FOIP.

**IV FINDING**

[28] I find that subsection 19(1)(b) of FOIP applies to all of the responsive records.

**V RECOMMENDATION**

[29] I recommend that SGI continue to withhold the responsive records.

Dated at Regina, in the Province of Saskatchewan, this 20th day of October, 2016.

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