

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF [REDACTED] IN RELATION TO INFORMATION
REQUESTED FROM SASKATCHEWAN GOVERNMENT INSURANCE**

[1] By an undated Information Request form [REDACTED] (the "Applicant") requested information from Saskatchewan Government Insurance (the "Respondent") as follows:

"I am looking for the guidelines, regulations, or other such controls adopted by SGI, for the purposes of investigating, or hiring designates to investigate claimants who are suspected of fraud.

I am looking for material in the possession of SGI that identifies questions about, or concerns about the administration of, and execution of, those guidelines.

I am looking for material that would reflect why SGI chose to investigate considerably fewer claimants in 2001, that [sic] it did in 2000.

These records I wish to access may include: documents, files, notes, reports, memorandums, letters, e-mails, briefing notes, transcripts of meetings, agendas of meetings, sticky notes - and any other material that makes reference to the above."

[2] By letter dated July 25, 2002 the Respondent replies as follows:

"Your application for access under *The Freedom of Information and Protection of Privacy Act* was received in this office on June 28, 2002.

This is to advise you that the records you have requested cannot be released. The information cannot be released because:

1. it is information, the release of which could reveal investigative techniques or procedures currently in use or likely to be used by SGI. Information of this nature is exempt from access. This exemption is provided for in section 15(1)(e) of *The Freedom of Information and Protection of Privacy Act*; and
2. it is information, the disclosure of which could reasonably be expected to prejudice the economic interest of SGI. Information of this nature is provided for in section 18(1)(f) of *The Freedom of Information and Protection of Privacy Act*

If you wish to have this decision reviewed you may do so within one year of this notice. To request a review you must complete a "Request for Review" form which is available at the same location where you applied for access. Your request should be directed to:

G.L. Gerrand, Q.C.
Information and Privacy Commissioner
700 - 1914 Hamilton Street
Regina, Saskatchewan
S4P 3N6

Further correspondence on this application should be directed to me at SGI Legal Department, 14th Floor, 2260 - 11th Avenue, Regina, Saskatchewan, S4P 0J9, Telephone No. 751-1221.

Yours Truly,

K.L. Lerner
Access Officer
Freedom of Information
SGI"

[3] On August 27, 2002 I received a Request for Review from the Applicant following which I wrote the Respondent, on August 28, 2002, the following letter:

"Saskatchewan Government Insurance
Legal Department
2260 - 11th Avenue
Regina, Saskatchewan
S4P 0J9

Attention Mr. K.A. Lerner, Access Officer, Freedom of Information

Dear Mr. Lerner:

Re: [REDACTED] and Saskatchewan Government Insurance
Application No [REDACTED]
File Reference: F 2002/041 RPR

On August 27th I received a Request for Review from [REDACTED] a copy of which is attached.

Pursuant to the provisions of Section 51 of *The Freedom of Information and Protection of Privacy Act*, I hereby advise you of my intention to conduct a review.

Would you please provide me with a copy of the information or records requested by the Applicant and which you have declined to disclose. This request is made pursuant to Section 54 of the Act.

In your response you may wish to make further submissions as to your reasons for declining the Applicant's request.

I look forward to your response.

Yours truly,

Richard P. Rendek, Q.C.
Acting Freedom of Information
and Privacy Commissioner
Province of Saskatchewan"

[4] The Respondent replied by letter dated September 13, 2002, as follows:

"Thank you for your letter of August 28, 2002, requesting a copy of the records or information [REDACTED] requested in his application under *The Freedom of Information and Protection of Privacy Act*, for the purpose of conducting a review of my decision refusing [REDACTED] access to the records or information.

I am enclosing a copy of SGI policies and procedures for investigating claimants suspected of fraud along with a copy of my letter of July 25, 2002 to [REDACTED] setting out the section of *The Freedom of Information and Protection of Privacy Act* I relied upon to refuse him access to these policies and procedures.

I note that in my July 25, 2002 letter to [REDACTED] I failed to clearly answer his questions concerning firstly, material in the possession of SGI identifying questions or concerns about the administration of and execution of fraud investigation guidelines and, secondly, the reduction in fraud investigations between 2000 and 2001. I will correct this oversight by follow up letter to [REDACTED] with a copy to yourself.

It is a matter of public record that insurance fraud in Canada costs the insurance industry close to a billion dollars annually and results in higher premium dollars for policyholders. SGI like other insurers in Canada is committed to implementing anti-fraud business practices aimed at preventing, detecting and controlling the cost of insurance fraud. SGI's fraud investigation policies and procedures have been developed with a view to achieving those objectives. Limiting knowledge of the manner in which we combat fraud to corporate staff contributes to the effectiveness of our efforts. Public disclosure of our fraud investigation policies and procedures would, in our view, only serve to benefit those who commit acts of insurance fraud by giving them an opportunity to take steps to avoid detection. This is an undesirable result and one that we believe can only be avoided by continuing with our present practice of limiting knowledge of our fraud investigation policies and procedure to corporate staff.

Please feel free to contact me with any questions.

I look forward to receiving your recommendation in this matter.

Yours truly,

K.A. Lerner
Access Officer
Freedom of Information"

As indicated in their letter, the Respondent enclosed a copy of the document to which the Applicant was denied access, which is entitled "Fraud Investigation – Policy and Procedures".

[5] In said letter the response also indicated that they would be forwarding a clarification letter to the Applicant regarding certain aspects of his information request.

[6] I accordingly advised the Applicant of this by letter dated September 16, 2002 which reads as follows:

"I have now received a response from Saskatchewan Government Insurance dated September 13, 2002 copy of which I enclose herewith.

I note that in the third paragraph of this letter that Mr. Lerner is forwarding you a letter of clarification together with a copy to myself.

Upon receipt of Mr. Lerner's additional letter I would appreciate your advising if you have any further representations or submissions that you wish to make prior to my proceeding with my review and report.

I look forward to hearing from you."

[7] The Respondent clarification letter to the Applicant was dated September 19, 2002 and reads as follows:

"Your application for access under *The Freedom of Information and Protection of Privacy Act* received in this office on June 28, 2002, included a request for the following records:

1. material in the possession of SGI that identifies questions about, or concerns about the administration of, and execution of, those guidelines.
2. material that would reflect why SGI chose to investigate considerably fewer claimants in 2001, than it did in 2000.

I note that in my letter to you of July 25, 2002 I omitted to respond to your request for these records. I am accordingly writing this letter to correct my omission.

The records you have requested in 1. and 2. above do not exist. The records have never been created.

I apologize for my oversight."

[8] The Applicant then forwarded to me two letters, dated September 30 and October 2, 2002 respectively which are set out below:

"September 30, 2002

I am writing in follow up to your letter of September 16, 2002.

Please consider the following submissions in regard to the decision of Saskatchewan Government Insurance to exempt SGI's policies and procedures for investigating insurance claimants suspected of fraud.

The documents were excluded under section 15(1)(e) of the Freedom of Information and Protection of Privacy Act.

(e) reveal investigative techniques or procedures currently in use or likely to be used.

I should note that my request does not ask for an itemized list of investigative techniques. Nor did it ask for a list of the procedures an investigator might use to collect information about an insurance claimant suspected of fraud.

Rather, I asked for documents that reflect the guidelines under which SGI's investigators, contract or otherwise, operate. Does SGI simply expect its investigators to operate within the confines of the Criminal Code? Or does it specify more precise rules of conduct for its investigators?

I do not believe that my request for guidelines, regulations, or other such controls is excluded by Section 15(1)(e). Section 15(1)(e) serves to protect the integrity of lawful investigations; it does not veto legitimate requests about controls or guidelines for such investigations. For example, The Municipal Police Discipline Regulations, 1991 (Sections 36 – 39) is a public document that clearly outlines rules of deportment for police officers. You can find it on line at:
<http://www.qp.gov.sk.ca/documents/English/Regulations/Regulations/P15-01R4.pdf>

The RCMP also has a code of conduct, as stipulated in the RCMP Act (Section 38). If these documents, and others like them, are deemed not to compromise lawful police investigations, surely releasing SGI's regulations would be equally benign.

I do not accept the notion that the release of these controls would in some way be economically injurious to SGI. Criminals are still being investigated and charged by police – despite the fact that guidelines for police behavior are widely available. I see no evidence that the perpetrators of insurance fraud would be any more successful should SGI's guidelines be released.

I also note that Justice Tallis has found that “There are specific exemptions from disclosure set forth under the Act, but these limited exemptions do not obscure the basic policy the [sic] disclosure, not

secrecy, is the dominant objective of the Act. (general [sic] Motors Acceptance Corp. of Canada v. Saskatchewan Government Insurance (1993), 116 Sask. R. 36 at 41 (C.A.). I believe there are compelling reasons to release this information.

Thank you for the opportunity to make representations on this matter.”

“October 2, 2002

Section 17(f)(i) indicates that “an instruction or guideline issued to the officers or employees of a government institution” ought to be released.

I believe the documents I seek qualify.”

[9] I forwarded copies of the above two letters to the Respondent who advised that they had no further representations to make to me.

[10] I have now had an opportunity to review the document of the Respondent which they are refusing to disclose to the Applicant and which I shall refer to as the “Manual”.

This Manual is composed of six sections which are respectively entitled:

- (i) – Fraud Procedures
- (ii) – Fraudulent Claims
- (iii) – Suspicious Claims Procedure
- (iv) – Referrals to SIU for Investigation
- (v) – New Procedure for Requesting Activity Checks
- (vi) – Surveillance Policy

[11] Section (i) outlines the standard policy approved by SGI’s Board of Directors for dealing with matters relating to suspicious and fraudulent business transactions including claims. Subsections A, B and C outline respectively the Fraud Policy, Fraud Definition and Anti-Fraud Initiatives. They do not deal

with specific procedures or investigative techniques and accordingly, in my view, are not exempt under section 15(1)(e) of *The Freedom of Information and Protection of Privacy Act*.

Similarly, my review indicates that they do not contain information, the disclosure of which could reasonably be expected to prejudice the economic interest of the Respondent and is therefore not exempt under Section 18(1)(f) of the Act.

Subsection D however outlines specific procedures to be followed in investigating insurance fraud and specifies the responsibilities and actions to be followed by staff, SIU's and Investigators. In my view this subsection is clearly exempt from production as it falls clearly within the ambit of both section 15(1)(e) and 18(1)(f) of the Act.

Subsection (ii) outlines 8 specific steps to be taken when dealing with fraudulent claims.

Subsection (iii) deals with specific procedures to be followed upon receipt of notice of a general fire loss and establishes who is to be the "responsible person" regarding the various steps in the procedure and what action is to be taken by them.

Subsection (iv) outlines the procedure to be followed when referring an injury claim to the SIU (Special Investigation Unit) and also outlines the procedures to be considered and/or followed by the SIU in their investigation of such claims.

Subsection (v) is a memo addressed to all Claims Branch Managers and Head Office Claims Managers that sets out the new procedures to be followed when requesting activity checks.

Clearly Subsection (ii) to (v) inclusive are governed by Section 15(1)(e) of the Act.

The final subsection is dated August 22, 2002 and is a memo from SGI's Litigation Department outlining procedures to be followed regarding surveillance tracking both in and out of Province. I am of

the view that it is also governed by Section 15(1)(e) of the Act with the exception of the last page which is entitled "Legal Department Surveillance Guidelines" and which is a form to be completed when requesting the use of surveillance.

[12] In his letter of October 2, 2002 the Applicant submits that the requested documents qualify for release under Section 17(2)(f)(i) of the Act as being "an instruction or guideline issued to the officers or employees of a government institution".

Section 17(2)(f)(i) applies to documents or records governed by Section 17(1) which sets out the records that a head may refuse to disclose and then subsection 2 indicates records to which Section 17(1) does not apply.

The refusal in the present case is made pursuant to Section 15(1)(e) of the Act to which Section 17(2)(f)(i) has no application.

In fact Section 15(2) sets out the instances of records to which Section 15(1) does not apply.

Accordingly, I am of the view that Section 17(2)(f)(i) has no application to the record in issue here.

[13] In the Applicant's Access to Information Request Form he made three separate requests which are set out in the first paragraph of this Report.


The Respondent advised in its letter dated September 19, 2002 that the records set out as the second and third requests of the Access Request Form have never been created and do not exist. Accordingly, there is no recommendation I can make in this regard.

[14] The Applicant in his letter of September 30, 2002 has made reference to other organizations and their Discipline Regulations or Codes of Conduct but I find that they have no application to the present case as they are clearly distinguishable and deal with matters of deportment not investigative procedures as in

the present case. Furthermore, the fact that similar documents have been disclosed by other government institutions does not provide an exception to coverage under section 15.

[15] In summary, I recommend that the Respondent continue to deny access to the records requested with the exception of Subsection A, B and C of Section (1) of the Manual and the last page of the Manual entitled "Legal Department Surveillance Guidelines".

[16] Dated at Regina, in the Province of Saskatchewan, this 23rd day of October, 2002.



RICHARD P. RENDEK, Q.C.
Acting Commissioner of Information
and Privacy for Saskatchewan