

**SASKATCHEWAN**  
**OFFICE OF THE**  
**INFORMATION AND PRIVACY COMMISSIONER**

**REPORT 2004 -- 001**

**SASKATCHEWAN GOVERNMENT INSURANCE**

**Summary:** The Applicant applied under the *Freedom of Information and Protection of Privacy Act* (the “Act”) for access to personal information related to her insurance claim. The government institution refused access to 5 documents and released the balance of the records. The Commissioner recommended that the exemption claim of the government institution under section 17(1)(b)(i) (consultations and deliberations involving employees of government institution) be upheld.

**Statutes Cited:** *Freedom of Information and Protection of Privacy Act*, S.S.1990-91, c. F-22.01, s. 17(1)(b)(i); *Freedom of Information and Protection of Privacy Act*, S.A. 1994, c. F-18.5 s. 24(1)(b)

**Authorities Cited:** Sask OIPC Reports: #2001/038, 2003/022, 2003/026, 2003/028, 2003/29, 2003/043, 2003/054  
Alberta OIPC Orders: #F2003-016, 2001-010, 96-006, 99-013.

**I BACKGROUND**

[1] The Applicant filed an Access to Information Request form with Saskatchewan Government Insurance (“SGI” or “the government institution”), wherein she requested the following:

“All adjuster’s notes: All inter-office memos; all the medical history and medical correspondence between SGI and SGI Doctors pertaining to [the Applicant]; all correspondence between SGI and all of [the Applicant’s] doctors; all medical records; all special investigation unit files, including written reports and taped investigations of audio/visual observations of [the Applicant].”

[2] SGI replied to this request by letter dated August 18, 2003, as follows:

“...Please find enclosed a copy of your file as per your request under the Freedom of Information Act.

Certain documents were withheld and are being reviewed by SGI’s Access, Privacy and Ethics Officer. He will respond to you directly.”

[3] Enclosed with the SGI letter was a copy of her entire file with the exception of five documents that were being withheld subject to review by the Respondents Access, Privacy and Ethics Officer.

[4] On September 29, 2003, the Office of the Information and Privacy Commissioner (“OIPC”) received a letter from the Applicant dated September 15, 2003, which read in part as follows:

“On July 15/03 I request my file using the Freedom of Information Act. On August 18/03, S.G.I. sent me only part of my file.”

[5] Upon receipt of the above letter, my predecessor wrote to the Respondent on September 23, 2003 as follows:

“I enclose herewith copy of letter received from the above named together with copy of the letter forwarded to her by SGI dated August 18, 2003.

The second paragraph of SGI’s letter of August 18 referenced to a review and response with respect to certain documents that were withheld from disclosure. The applicant advises that she has never received such a response.

Would you be good enough to look into this matter and advise whether or not a response was in fact forwarded to applicant and if so, would you be good enough to provide me with a copy of same.

If there has been no response to the access request, would you be good enough to provide the applicant with same at this time together with a copy of the response to myself. When responding, would you also be good enough to provide me with a copy of the applicants original Access to Information Request Form.”

[6] SGI replied to my predecessor's request by letter dated October 15, 2003, which read, in part, as follows:

“Further to your letter of October 14, I enclose a copy of the applicant's original Access to Information Request Form. On August 18, 2003, [the Applicant] was provided with a copy of her file, save for the documents which are attached to this letter.

SGI takes the position that the following documents should not be released pursuant to subsection 17(1)(b)(i) of the Act, as they would disclose deliberations or consultations between SGI employees:

1. Three online memos of April 30, 2003 between SGI employees with respect to mediation and the payment of income replacement benefits

SGI takes the position that the following notes not released by the adjuster should be released:

1. Online injury note of June 21, 2000;
2. Online injury note of February 18, 2000.

## **II RECORDS AT ISSUE**

[7] It was indicated in SGI's letter there were five documents initially withheld from disclosure, two of which they indicated should now be released, namely the online injury note of February 18, 2000 and the online injury note of June 21, 2000. I presume that copies of these two documents have now been released to the Applicant.

[8] The remaining documents that the Respondent continues to withhold are three online injury notes created on April 30, 2003 by employees of the Respondent. I have reviewed these three injury notes and they consist of one or two lines each and are memoranda of discussions or deliberations by employees of the Respondent with respect to mediation and the payment of income replacement benefits.

### III ISSUE

Did the government institution properly apply section 17(b)(i) of the *Freedom of Information and Protection of Privacy Act* (“the Act”) to the records withheld?

### IV DISCUSSION OF THE ISSUE

[9] The Respondent takes the position that these three documents are exempt from disclosure pursuant to the provisions of 17(1)(b)(i) of the Act. The section reads as follows:

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;

[10] This Office is not bound by precedent or the law of *stare decisis* but nonetheless I intend to be guided by decisions and recommendations of my predecessors. I intend to follow earlier decisions of this Office unless there are compelling reasons to take a different approach. In such a case I will explain my reasons for taking a different approach. Section 17(1)(b)(i) has been considered by this Office in reports #2001/038, 2003/022, 2003/026, 2003/28, 2003/29, 2003/043 and 2003/054.

[11] This Office will also be guided and informed by decisions of counterparts in other Canadian jurisdictions. There are many similarities between the provisions of the *Freedom of Information and Protection of Privacy Act* and access to information and privacy laws in other provinces and territories as well as the federal *Access to Information Act* and federal *Privacy Act*. Section 24(1)(b)(i) of the Alberta *Freedom of Information and Protection of Privacy Act* provides that:

“24(1) The had of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal...

(b) consultations or deliberations involving

(i) officers or employees of a public body,...”

[12] A “consultation” occurs when the views of one or more officers or employees of a government institution are sought as to the appropriateness of a particular proposal or suggested action. (Alberta Order F2003-016 [20]) A “deliberation” is a discussion of the reasons for and against an action by the persons described in this section. (Alberta Order 2001-010 [32]) The records withheld involve either consultation and deliberation.

[13] In order to justify withholding a record on a basis of section 17(1)(b)(i), the opinions solicited during a “consultation” or “deliberation” must:

- a) either be sought or expected, or be part of the responsibility of the person from whom they are sought;
- b) be sought for the purpose of doing something, such as taking an action or making a decision; and
- c) involve someone who can take or implement the action. (Alberta Orders 96-006 [p.10], 99-013[48])

The records withheld meet these three criteria.

## **V RECOMMENDATIONS**

[14] I have already indicated that, in my view, each of the three documents or notes being withheld can be described as consultations or deliberations involving officers or employees of a government institution, and as such they are governed by section 17(1)(b)(i) of the Act and are exempt from disclosure.

[15] I would therefore recommend that SGI continue to deny access to the Applicant of these three documents.

[16] Dated at Regina, in the Province of Saskatchewan, this 31 day of March, 2004.

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R. GARY DICKSON, Q.C.  
Acting Information and Privacy  
Commissioner for Saskatchewan