



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 213-2017 & 286-2017

Saskatchewan Government Insurance (SGI)

December 19, 2017

Summary:

The Applicant submitted two access to information requests to Saskatchewan Government Insurance (SGI). SGI responded to the Applicant indicating it could not search for portions of the requests based on the information provided. SGI denied other portions of the Applicant's request pursuant to subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Once the Information and Privacy Commissioner (IPC) had commenced its review, SGI found that it was able to conduct a search of the Applicant's requests and found that it had not considered responsive records stored off-site. The IPC found that subsection 29(1) of FOIP applied to the responsive records, except for those instances where it was the Applicant's personal information. The IPC recommended SGI ensure its policies and procedure for processing access to information requests reflect options for conducting search for records and ensure its search efforts consider records stored off-site. It was also recommended SGI continue to withhold the responsive records pursuant to subsection 29(1) of FOIP, with the exception of the instances of the Applicant's own personal information.

I BACKGROUND

Request #1 (IPC File: 213-2017)

- [1] On June 16, 2017, Saskatchewan Government Insurance (SGI) received an access to information request (Request #1) from the Applicant for the following records:

I am requesting "any & all records" of SGI's knowledge & responsibility for the flood insurance claim at [street address of Individual A]

...

A contract between SGI & [third party contractor] for flood insurance work

...

Any & all records of financial renumeration [sic] between SGI & [third party contractor]

...

Any & all records of financial renumeration [sic] paid out on claim settlements to the insured at [street address of Individual A]

I am requesting the name of the deaf woman, "Female head of the home" at [street address of Individual A]...

...

I am requesting the release of any & all information contained in the SGI insurance injury file of [name of Individual B], my work partner &, [sic] my passenger when we were T-Boned...

...

I am requesting the release of any & all information about [name of Doctor]... the SGI consultant... I request the contract between SGI & the Consultant. I request the disclosure of financial reimbursement this Dr. received to review & respond to my case...

...

I am requesting the release of any & all information as it relates to [third party contractor]... I request SGI release his last name...

[2] On June 29, 2017, SGI responded to Request #1 as follows:

You have endeavoured to clarify your request and as a result, expanded it to include the following:

1. Any and all records for a flood insurance claim at [street address of Individual A].
2. A contract between SGI and [third party contractor] for flood insurance work.
3. Any and all records of financial remuneration between SGI & [third party contractor] related to [street address of Individual A].
4. Any and all records of financial remuneration paid to the insured at [street address of Individual A].
5. The name of the Deaf Woman "Female head of the Home" at [street address of Individual A].
6. The SGI insurance injury file of [name of Individual B] pertaining to the accident on August 14, 2014.
7. Any and all information about [Name of Doctor], the SGI Consultant...
8. The contract between SGI and the Consultant.

9. Disclosure of the financial reimbursement [Name of Doctor], received to review & respond to your case.
10. Any and all information as it relates to [third party contractor].
11. [third party contractor's] last name.

Pertaining to #1, 3, 4, 5 – As previously advised in my letter dated May 5, 2017 and our telephone conversation on June 6, 2017, SGIs records are not arranged by physical location of the claim. SGI's claim records pertaining to flood claims are only searchable by insured's name or claim number. Therefore, SGI is unable to assist you in locating anything pertaining to [street address of Individual A], without the name of the insured or a file number. Furthermore, anything pertaining to the claim at this address would be personal information of the insured and as such would not be releasable to you as they would fall under section 29(1) of *The Freedom of Information and Protection of Privacy Act* ("the Act"). Section 29(1) of the Act states that SGI shall not disclose personal information in its possession or under its control without the consent of the individual to whom the information relates.

Pertaining to #2 – As explained to you in our phone conversation on June 6, 2017, SGI does not hire contractors to fix an insured's house – it is the insured's choice and responsibility to hire a company to fix the house. Therefore, these records do not exist. This notification has been provided pursuant to clause 7(2)(e) of the Act.

Pertaining to #6 – Your request for this portion has been denied. Section 29(1) of the Act states that SGI shall not disclose personal information in its possession or under its control without the consent of the individual to whom the information relates. SGI is withholding all 238 pages of [name of Individual B's] injury file as it is personal information of a third party.

Pertaining to #8 – For the dates [Name of Doctor] reviewed your file, 20 pages are responsive to your request. If you wish to obtain these pages, you will be required to pay a fee to reproduce these documents. The estimated cost for reproducing is 25 cents per page – 20 pages x 25 cents/page = \$5.00. Please be advised that portions of the contract will be redacted pursuant to section 18(1)(f) of the Act which states that SGI is not required to disclose information which could reasonably be expected to prejudice the economic interest of the Government of Saskatchewan or a government institution.

...
Pertaining to #9 – Your request for this portion has been denied. Section 18(1)(f) of the Act states that SGI is not required to disclose information which could reasonably be expected to prejudice the economic interest of the Government of Saskatchewan or a government institution and section 29(1) of the Act states that SGI shall not disclose personal information in its possession or under its control without the consent of the individual to whom the information relates. Any reimbursement [name of Doctor] received to review & respond to your file is considered financial information of SGI as well as [name of Doctor] personal information.

Pertaining to #10 – SGI has no information pertaining to [third party contractor] as he is not an insured, nor does SGI specifically contract work to them; as above, it is the

insured's responsibility to hire their own contractors. As such, these records do not exist. This notification has been provided pursuant to clause 7(2)(e) of the Act.

Pertaining to #11 – SGI cannot provide a last name for [third party contractor] as we do not have any records relating to this company as advised above. As such, these records do not exist. This notification has been provided pursuant to clause 7(2)(e) of the Act.

- [3] On August 21, 2017, my office received a request for review from the Applicant for Request #1. My office advised the Applicant that our office could not review records relating to item 8 of her request as she had not obtained the records from SGI. If the Applicant chose to pay the \$5.00 fee and obtain copies of those records and wished to request a review of any redactions applied, she would need to submit a request for review at that time.
- [4] On August 28, 2017, my office provided notification to SGI and the Applicant of our intention to conduct a review. On October 4, 2017, my office received a copy of SGI's submission. In its submission, SGI also raised the application of subsection 18(1)(f) of FOIP. With its submission, SGI enclosed a copy of an October 3, 2017 letter to the Applicant providing additional information responsive to the Applicant's request:

...our office is prepared to provide you with a copy of [name of Doctor's] resume and advised that [name of Doctor] was paid approximately \$2,044 for the services provided on your file.
- [5] My office followed up with the Applicant to confirm receipt of the October 3, 2017 letter from SGI and copy of the requested resume. The Applicant advised she had received the information and was satisfied with the records provided in response to that portion of her request and as such did not wish to pursue a review on items 7 and 9 of Request #1.
- [6] As such, I will only review the response to the information requested at items 1 through 6, 10 and 11 of Request #1.

Request #2 (IPC File: 286-2017)

- [7] On August 28, 2017, SGI received an access to information request (Request #2) from the Applicant for “any and all records related to [third party contractor] as requested in accompanying [sic] document.” The accompanying document referred to provided the following:

I am requesting “any and all records” of SGI’s knowledge & responsibility for the flood insurance claim @ [street address of Individual A].

These may include, but are not limited to:

A contract between SGI & [third party contractor] for flood insurance work

...

I am requesting:

Any & all records of financial renumeration [sic] between SGI & [third party contractor]

...

Any & all records of financial renumeration [sic] paid out to [third party contractor] on Claim Settlement or to the insured at the [street address of Individual A]

...

I am requesting the release of any & all information at it relates to [third party contractor]

...

- [8] On August 30, 2017, SGI responded to Request #2 as follows:

...You requested “Any & all records related to [third party contractor] as requested in the accompanying [sic] document.” The following lists what you requested in the accompanying document:

1. Any and all records of SGI’s knowledge & responsibility for the flood insurance claim at [street address of Individual A]
2. A contract between SGI and [third party contractor] for flood insurance work.
3. Any and all records of financial remuneration between SGI & [third party contractor].
4. Any and all records of financial remuneration paid out to [third party contractor] on claim settlement or to the insured at [street address of Individual A].

5. Any and all information as it related to [third party contractor]

Pertaining to #1 & 4 – SGIs records are not arranged by the physical location of the claim. SGI's claim records pertaining to flood claims are only searchable by insured's name or claim number. Therefore, SGI is unable to assist you in locating anything pertaining to [street address of another individual] without the name of the insured or a file number. Furthermore, anything pertaining to the claim at this address would be personal information of the insured and as such would not be releasable to you as they would fall under section 29(1) of the Act...

Pertaining to #2 – SGI does not hire contractors to fix an insured's house – it is the insured's choice and responsibility to hire a company to fix their house. A search of our contracts back to 2009 did not result in any contracts with [first and last name of third party contractor] or [third party contractor]; as such these records do not exist...

Pertaining to #3 – A search of our payees did not result in finding [first and last name of third party contractor] or [third party contractor]; as such, these records do not exist.

Pertaining to #5 – SGI has no information pertaining to [third party contractor] as he is not an insured, nor does SGI specifically contract work to them; as above, it is the insured's responsibility to hire their own contractors. Therefore these records do not exist.

- [9] On November 14, 2017, my office received a request for review from the Applicant for Request #2. The Applicant had already requested the same information outlined in item 1 of Request #2 as item 1 of Request #1. As I will already be reviewing SGI's response to the request for those records in Request #1, there is no need for me to consider it in Request #2. My office communicated same to the Applicant by phone on November 16, 2017.
- [10] While items 2 through 5 of Request #2 appear to be similar in nature to information requested in Request #1, the Applicant was able to provide the first and last name of the contractor and name of the third party contractor's company in full for SGI to conduct a search for responsive records that may not have been captured in its search for responsive records in Request #1. As such, my office will proceed with the review of items 2 through 5 of Request #2.
- [11] On November 16, 2017, my office provided notification to SGI and the Applicant of our intention to conduct a review. On November 30, 2017, my office received a copy of SGI's submission.

- [12] This review report will deal with the information requested at items 1 through 6, 10 and 11 of Request #1 as well as items 2 through 5 of Request #2.

II RECORDS AT ISSUE

- [13] While preparing its submission to my office, SGI was able to identify additional records responsive to the Applicant's request. The responsive records consist of 726 pages of claim files.

III DISCUSSION OF THE ISSUES

- [14] SGI is considered a “government institution” as defined by subsection 2(1)(d) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

1. Did SGI conduct a reasonable search for responsive records?

- [15] In the notification, my office requested SGI describe its search efforts for the Applicant's request. In the *IPC Guide to Exemptions*, it provides the following list of details a public body can provide in its submission regarding search efforts:

- Outline the search strategy conducted:
 - For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others;
 - Identify the employee(s) involved in the search and explain how the employee(s) is “experienced in the subject matter”;
 - Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search:
 - Describe how records are classified within the records management system. For example, are the records classified by:
 - alphabet
 - year

- function
 - subject
- Consider providing a copy of your organization's record schedule and screen shots of the electronic directory (folders & subfolders).
 - If the record has been destroyed, provide copies of record schedules and/or destruction certificates;
- Explain how you have considered records stored off-site.
 - Explain how records that may be in the possession of a third party but in the public body's control have been searched such as a contractor or information service provider. For more on this, see the OIPC resource, *A Contractor's Guide to Access and Privacy in Saskatchewan* available on our website.
 - Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).
 - Which folders within the records management system were searched and explain how these folders link back to the subject matter requested?
 - For electronic folders – indicate what key terms were used to search if applicable;
 - On what dates did each employee search?
 - How long did the search take for each employee?
 - What were the results of each employee's search?
 - Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see the OIPC resource, *Using Affidavits in a Review with the IPC* available on our website.
- [16] In SGI's June 29 and August 30, 2017 responses to the Applicant, SGI indicated it was not able to search for records responsive to items 1, 3, 4 and 5 of Request #1 and item 4 of Request #2 with only a street address as "the claim records pertaining to flood claims are only searchable by insured's name or claim number."
- [17] However, in September while preparing its submission for my office on Request #1, SGI advised it found it was able to search for claim records based on a street address. The

search for claims records using the street address resulted in 255 pages that were responsive to items 1, 4 and 5 of Request #1. A review of the responsive records located by SGI do not appear to contain any reference to the third party contractor identified by the Applicant.

- [18] SGI further provided my office with information regarding how property claims are processed:

...the claims process for property claims requires the insured to hire and pay the contractor. SGI reimburses the insured on a negotiated value of the damage. If the insured directly hired [name of third party contractor], SGI would not have a record of same. This is different then [sic] an Auto Claim where SGI does pay the Auto Body shop directly.

- [19] As well, while preparing its submission, SGI found that during its search for records responsive to item 6 of Request #1, the records stored off-site were not considered. As such, SGI conducted a search of these records and identified additional records responsive to that item of the request. Initially, SGI had identified 238 pages responsive in its general insurance system (GIS). After including the records stored off-site, although many of the pages were repetitive in nature, SGI identified a total of 471 pages of responsive records.

- [20] In the future, when responding to access to information requests, SGI should ensure its search strategy considers all records in its possession or control to ensure it identifies all responsive records. SGI should ensure its policies and procedures for processing access to information requests reflect the options available to search for records (such as a search using only an address) and that all records in its possession and/or control, including those stored off-site, are considered when conducting a search for responsive records.

- [21] SGI's response to Request #1 indicated that access to the requested information relating to items 2, 10 and 11 do not exist and as such access was refused pursuant to subsection 7(2)(e) of FOIP. In its response to Request #2, SGI also indicated that responsive records did not exist for items 2 through 5 and as such access was refused pursuant to subsection 7(2)(e) of FOIP.

- [22] Subsection 7(2)(e) of FOIP provides as follows:

7(2) The head shall give written notice to the Applicant within 30 days after the application is made:

...

(e) stating that access is refused for the reason that the record does not exist;

- [23] In its submissions to my office, SGI indicated it used both variations of the third party contractor's company name and the first and last name of the third party contractor, as supplied by the Applicant, to conduct a search for responsive records. SGI used this information to search the "payee status" in its Underwriting and Claims system and SGI's legal department database to search for contracts but yielded no results.
- [24] In its August 30, 2017 response to Request #2, SGI indicated it had searched as far back as 2009 for contracts with the third party contractor and did not find any records existed. When asked why the search stopped at 2009, SGI indicated it had based its search time frame on the year of the flood insurance claim and also searched the five years prior. As some of the items in the two requests were not directly tied to the flood insurance claim, my office contacted the Applicant to determine if a search back to 2009 would suffice for the information she was seeking. The Applicant advised that for the records she was seeking, a search back to 2009 would capture any records of interest to her.
- [25] Based on the information provided by SGI, it appears it has performed a reasonable search for records responsive to both requests.

2. Did SGI properly apply subsection 29(1) of FOIP to the requested records?

- [26] The application of exemptions can only be reviewed for those items where SGI identified responsive records. As such, the application of subsection 29(1) of FOIP will only be considered for items 1, 4, 5 and 6 of Request #1.
- [27] In SGI's response to the Applicant, it indicated that if records responsive to items 1, 4, 5 and 6 of Request #1 existed, subsection 29(1) of FOIP would apply.

[28] Subsection 29(1) of FOIP provides as follows:

- 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.
- [29] In SGI's submission to my office it stated that it was of the opinion all claims information was personal information involving both financial and personal information. SGI also stated that without consent of the individual, it would not release any information. Further, it provided that insurance affairs are an implicitly private matter for its customers that would likely be viewed as a significant violation of their privacy should claim information be accessible by the general public.
- [30] Further, SGI stated a line-by-line redaction was not appropriate in these circumstances. Its position was that not only would customers consider this to be a violation of their privacy, but that it would involve a considerable effort by SGI in removing customer information, rendering the documents meaningless and the information as a whole unreadable. SGI quoted the following excerpt from Merk Frost Canada Ltd. v. Canada Health [2012] S.C.R 23 to further support this position:

The heart of the s. 25 exercise is determining when material subject to the disclosure can reasonably be severed from exempted material. In my view, this involved both a semantic and a cost-benefit analysis. The semantic analysis is concerned with whether that is left after exercising exempted material has any meaning. If it does not, then severance is not reasonable... The cost-benefit analysis considers whether the effort of redaction by the government institution is justified by the benefits of severing and disclosing the remaining information. Even where the severed text is not completely devoid of meaning, severance will be reasonable only if disclosure of the unexercised portion of the record would reasonably fulfil the purpose of the Act. Where severance leaves only disconnected snippets of releasable information, disclosure of that type of information does not fulfill the purpose of the Act and severance is not reasonable.

[31] For records responsive to item number 6, SGI also noted this was a claim under Part VIII of *The Automobile Accident Insurance Act* (AAIA), and provided that:

SGI information handling practices on injury claims is largely governed by *The Health Information Protect Act* [HIPA] and our office is exempt from part II, IV and V of that

Act. Where access concerns information that doesn't qualify as personal health information I again note that SGI considers all information on that file personal information and, absent our customer's consent, SGI is of the view [the Applicant] is not entitled to this information.

- [32] British Columbia Information and Privacy Commissioner Order F06-19 discusses an Applicant's request for records related to an automobile accident that contained information about the Applicant's claim as well as claim files for two others involved. In this report, it is discussed if the records' contents contain personal information, and if so if that information is considered to be an unreasonable invasion of personal privacy as follows:

[145] The first steps in the analysis is to identify the respective personal information of the applicant and the third party. The information severed or withheld under s. 22 does not include information about the applicant, but s. 22 is the personal information of the owner of the first car or third car.

[146] The type of information includes the address, details about the parties' insurance coverage, driver's licence number, amounts paid to the other parties,... medical condition of the other parties as a result of the accident,... details of previous claims,... the other parties' injuries and ongoing medical conditions and treatments (including an Independent Medical Examination), details about the ongoing bodily injury claims, correspondence between ICBC [Insurance Corporation of British Columbia] and health care professionals for one of the owners and correspondence between ICBC and one of the claimants about the claim.

...

Medical information

[149] ... In the case of one of the third-party claims, there is medical information included as part of the evaluation of the claim. This includes prescriptions, reports (including medical legal reports), description of the injuries and treatments, medical history, correspondence between ICBC and health professionals, payments for medical expenses, and payments for producing various medical reports or chart reviews. This type of information clearly falls under the presumed unreasonable invasion of personal privacy... I find that ICBC is required to withhold all the above noted medical information.

Employment and educational information

[150] ...Some of the records include information about a third party's current and past employment, details about the nature of the employment and the working hours, name of the employer, and further details about the nature of the employment (including earned and lost income). I include under this heading calculations of lost wages and

the amounts of the advances on the claim for lost wages...The information withheld by ICBC is subject to the presumed invasion of personal privacy... I find that ICBC is required to refuse access to the third parties' employment and education related information.

Financial information

[151] ...This financial information consists of details of the third parties insurance coverage and previous claims.

[152] Details of the insurance are personal information of the third party. In this case, the detail includes the insurance rate, policy details and use of the car. It also includes details about the investigation of the third-party claim... As this information is about the third parties' finances or financial history... I find that ICBC is required to refuse to disclose financial information of the third parties.

...

[156] The information about the cost of the car rental, amount of the "total loss settlement", the valuation of the loss... is about the vehicle and not about the individual. As such, s. 22(1) does not apply to the information. However, I have severed personal information on those pages including address information, amount of deductible and banking information.

Claims processing information and third party contact information

[157] Much of the information withheld from the applicant that is not covered above relates to the general processing of the third parties' claims. These records include the correspondence about actions taken by ICBC on the claims file and name contact information such as phone number and driver's license number. Where the information relates to financial history...some of the other processing information may, however, not be related to financial history, but disclosure of this information would be an unreasonable invasion of third party personal information under s. 22(1)... I find ICBC was required to withhold this information.

- [33] Based on the information contained in the records responsive to items 1,4, and 5, I find that the records contain the personal information of individuals other than the Applicant, as such this information would qualify as personal information as defined in subsection 24(1) of FOIP. I find that SGI appropriately applied subsection 29(1) of FOIP to the records responsive to items 1,4 and 5.
- [34] For the records responsive to item number 6, the majority of the information would qualify as personal information of an individual other than the Applicant and as such, subsection

29(1) of FOIP would apply. However, there are instances in these records that contain personal information of the Applicant or information supplied by the Applicant.

- [35] SGI should continue to withhold the responsive records in full pursuant to subsection 29(1) of FOIP, with the exception of the Applicant's personal information found in the records responsive to Request #1 – Item 6.

IV FINDINGS

- [36] I find SGI has conducted a reasonable search for responsive records.
- [37] I find SGI has appropriately applied subsection 29(1) of FOIP to the responsive records, with exception of the instances of the Applicant's personal information in Request #1 – Item 6.

V RECOMMENDATIONS

- [38] I recommend SGI ensure its policies and procedures regarding processing access to information requests reflect the options available for searching for responsive records based on information provided (such as address) and ensure search for records include all records in its possession or control, including those stored off-site.
- [39] I recommend that SGI continue to withhold the responsive records in full, with the exception of personal information of the Applicant found in records responsive to Request #1 – Item 6.

Dated at Regina, in the Province of Saskatchewan, this 19th day of December 2017.

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