



REVIEW REPORT 273-2019

Saskatchewan Government Insurance

August 18, 2020

Summary:

The Applicant made an access to information request for a record, to which Saskatchewan Government Insurance (SGI) withheld in its entirety pursuant to subsections 29(1) and 15(1)(b)(i) and (c) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner found that SGI properly applied subsection 29(1) of FOIP to the record, and that he did not need to consider SGI's application of subsections 15(1)(b)(i) and (c) of FOIP to the record. The Commissioner recommended that SGI continue to withhold the record in its entirety pursuant to subsection 29(1) of FOIP.

I BACKGROUND

[1] On July 2, 2019, Saskatchewan Government Insurance (SGI) received an access to information request from the Applicant for the following:

[a]ll the computer records from the car that hit me owned by [name of other driver], including but not limited to the speed which affects my health and medical treatment for injuries.

[2] The Applicant's requested timeframe was for "May 14, 2019 to present".

[3] On August 1, 2019, SGI responded to the Applicant that it was denying the Applicant's access to information request pursuant to subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). In its submission, SGI added that it was also relying on subsections 15(1)(b)(i) and (c) of FOIP to deny access to the Applicant.

[4] On August 12, 2019, the Applicant submitted a request for review to my office.

[5] On August 14, 2019, my office notified both SGI and the Applicant of my office's intent to undertake a review.

II RECORDS AT ISSUE

[6] The record at issue is a 16-page "Crash Data Retrieval" document that SGI has withheld in its entirety from the Applicant pursuant to subsections 15(1)(b)(i), (c) and 29(1) of FOIP.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to conduct this review?

[7] SGI is a "government institution" pursuant to subsection 2(1)(d)(ii) of FOIP; therefore, I have jurisdiction to conduct this review.

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

[8] 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.

[9] Subsection 29(1) of FOIP is a mandatory exemption intended to protect the privacy of individuals whose personal information may be contained within records responsive to an access to information request made by someone else. In order for subsection 29(1) to apply, the information must qualify as "personal information" pursuant to subsection 24(1) of FOIP. The list of examples provided for at subsection 24(1) of FOIP are not meant to be

exhaustive. This means there can be other types of information that could qualify as personal information.

[10] In order to constitute personal information, two elements must be present: an identifiable individual and information that is personal in nature. The definition for each is as follows:

- *Identifiable individual* means that it must be reasonable to expect that an individual may be identified if the information were disclosed. The information must be reasonably capable of identifying particular individuals because it either directly identifies a person or enables an accurate inference to be made about their identity when combined with other available sources of information or because of the context of the information in the record.
- *Personal in nature* means that the information reveals something personal about the individual.

[11] I note that, in the past, my office has found that a vehicle identification number (VIN) does not qualify as personal information. I further note that, pursuant to subsection 24(2)(e) of FOIP, “personal information” does not include the details of a license or permit granted to an individual by a government institution. Subsection 17(1)(a) and (b) of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations) describes what “driver licence information” and “driver record information” mean as follows:

17(1) In this section:

- (a) “**driver licence information**” means the name and address of a driver;
- (b) “**driver record information**” means information with respect to:
 - (i) a driver’s convictions for vehicle-related offences; or
 - (ii) accidents involving a driver;

[12] In this matter, the Applicant stated SGI had provided them with the other driver’s “VIN, and information from the police – his name, plate number, and drivers [sic] license number”. The Applicant added that SGI provided them with, among other information, “the year, make, model, body style and color [of the other driver’s vehicle]”. This would all appear to align with what SGI is able to provide pursuant to subsection 24(2)(e) of FOIP and subsection 17(1)(a) and (b) of the FOIP Regulations. What I need to consider,

however, is if, pursuant to FOIP, the event data recorder (EDR) is personal information, or if it can be treated in the same manner as the information SGI has already provided to the Applicant.

- [13] With respect to the EDR data, I will first consider if it is about an identifiable individual. With respect to the information in the record in question, SGI stated the following:

It is SGI's position that EDR data is "personal information about an identifiable individual" (FOIPP Act, s.24(1)). By letter from SGI dated [date], the vehicle owner's name and address were provided to the Applicant/Third Party for the purpose of commencing legal action. While the owner of a vehicle is not always the same individual who is driving the vehicle at the time of an accident that generates EDR data, in the present case the owner and driver are the same person. Consequently, in the present case, the identity of the individual driving the vehicle at the time the EDR data was generated is known to the Applicant/Third Party. It is SGI's position that, while EDR data on its own does not identify an individual driver, in a case where an applicant knows the identity of the driver, disclosure of the EDR data constitutes disclosure of "personal information about an identifiable individual"...

- [14] As the Applicant already knows who the individual is, I find that the information meets the first element and that it is about an identifiable individual. I will now consider whether the information is personal in nature.

- [15] The term EDR is a device installed on some automobiles to record information related to vehicle crashes or accidents. From the British Columbia Freedom of Information and Privacy Association's publication, *The Connected Car: Who is in the Driver's Seat?* (2015) (*The Connected Car*), EDRs "[c]ollect crash-related data from the vehicle including direction of impact, air bag deployment, vehicle speed, engine throttle, brake activation, crash forces, and seat belt use in the seconds before and during a crash. The data collected is stored in the device and cannot be accessed other than directly by someone with physical access to the vehicle".

- [16] I have not previously considered a matter involving EDRs. However, in Investigation Report P2005-IR-009, Alberta's Information and Privacy Commissioner (AB IPC) considered a matter whereby an employer collected EDR information from privately owned vehicles of employees. In that report, the AB IPC stated, "[t]he EDR does not itself

identify an individual. It does not collect the name or other personal characteristics of individuals driving the motor vehicle. It does, however, retain the driving data of whoever was operating the vehicle during the (normally) 5 seconds prior to a “triggering event”. In other words, the driver data does not tell us who was driving; it only tells us how that person was driving at the time of an accident.

[17] Further, *The Connected Car* refers to the data that a car collects as “driver behavior data”, or data that “reveals something about that person [the driver]”. For example, such data could reveal not only aspects of our behavior such as how fast we drive on regulated roads, but such data is also capable of describing factors such as where we have traveled and when. If you consider that you may not want your insurance company to know how fast you drive on regulated roads, or your spouse to know you have been at a certain location, then it is easy to see that such information can reveal something about your private life that might not otherwise be known to others. The fact that it reveals something personal about us is what makes it personal in nature.

[18] With respect to this matter, I am of the view that EDR data would indeed reveal something about the other driver that might not otherwise be known; that is, how they were driving just prior to the accident, and that such information would be personal in nature. Because there is an identifiable individual, and because EDR information is personal in nature, I find that information from the other driver’s EDR is their personal information and would not constitute the details of a licence as provided for at subsection 24(2)(e) of FOIP. Further, there are not elements in the record that would be about the vehicle such as tire pressure or the type of engine. Rather, the elements pertain specifically to how the vehicle was being driven.

[19] To release personal information, subsection 29(1) of FOIP requires a government institution to have the consent of the individual whose personal information is in the record prior to disclosing it unless one of the exceptions of subsection 29(2) are found to apply. It does not appear that the other driver has consented to the release of their personal information, or that subsection 29(2) applies. Therefore, I find that SGI has properly

applied subsection 29(1) of FOIP to the record and I recommend that it continue to withhold the record in its entirety.

[20] Because I find that subsection 29(1) of FOIP applies to the entire record, I do not need to consider the other exemptions SGI has applied.

IV FINDING

[21] I find that SGI has properly applied subsection 29(1) of FOIP.

V RECOMMENDATION

[22] I recommend that SGI continue to withhold the record in its entirety.

Dated at Regina, in the Province of Saskatchewan, this 18th day of August, 2020.

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