

SASKATCHEWAN
OFFICE OF THE
INFORMATION AND PRIVACY COMMISSIONER

REVIEW REPORT F-2013-007

Saskatchewan Government Insurance

Summary:

The Applicant made an access to information request to Saskatchewan Government Insurance (SGI) requesting all information from his SGI claim file following a motor vehicle accident. SGI withheld, in part, portions of the responsive record pursuant to sections 17(1)(b)(i), 18(1)(f), 22(a) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). During the course of the review, the Commissioner found significant delay occurred in part due to poor preparation by SGI of the record, Index of Records and submission required by the Commissioner's office to conduct a proper review. Further, the Commissioner found this contributed to a finding that SGI did not meet the burden of proof pursuant to section 61 of FOIP in most cases. The Commissioner found that SGI could apply section 17(1)(b)(i) of FOIP to some of the records in question but did not appropriately apply this section to others. He further found that SGI appropriately applied sections 22(a) and 29(1) of FOIP to some of the records but did not appropriately apply these sections to other records or portions of records in question. He also found that SGI did not meet the burden of proof in establishing that section 18(1)(f) of FOIP applied to some of the records. Finally, he found that SGI failed to identify personal health information of a third party subject to *The Health Information Protection Act* (HIPA) and recommended that SGI withhold the personal health information pursuant to section 27(1) of HIPA. The Commissioner recommended that SGI release those records or portions of records found not to qualify for exemption under sections 17(1)(b)(i), 18(1)(f), 22(a) and 29(1) of FOIP.

Statutes Cited:

The Freedom of Information and Protection of Privacy Act, S.S. 1990-91, c. F-22.01, ss. 2(1)(d), 17(1)(b), 17(1)(b)(i), 18(1)(f), 22(a), 24, 24(1), 24(1)(a), 24(1)(b), 24(1)(d), 24(1)(e), 24(1)(k), 24(1)(k)(i), 29(1), 61; *The Health Information Protection Act*, S.S. 1999, c. H-0.021, ss. 2(m),

2(m)(i), 2(t)(i), 4(4)(b), 27(1); Alberta's *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s. 24(1)(b); *The Automobile Accident Insurance Act*, S.S. 1978, c. A-35.

Authorities Cited: Saskatchewan OIPC Review Reports: F-2004-001, F-2004-002, F-2004-005, F-2004-007, F-2005-002, F-2005-004, F-2006-001, F-2006-002, F-2006-004, F-2006-005, F-2007-002, F-2012-001/LA-2012-001, F-2012-003, F-2012-006, F-2013-003, F-2013-005 LA-2010-001, LA-2011-001, LA-2011-004, LA-2013-002; Saskatchewan OIPC Investigation Reports: H-2004-001, F-2010-001, F-2012-005, F-2013-002; Alberta IPC Orders: 96-017, 98-016, F2004-026, F2007-008, F2009-008.

Other Sources Cited:

Saskatchewan OIPC: *Helpful Tips: OIPC Guidelines for Public Bodies/Trustees in Preparing for a Review.*

I BACKGROUND

[1] The Applicant submitted an access to information request to Saskatchewan Government Insurance (SGI) on February 18, 2011 requesting his “complete file” related to his accident insurance claim.

[2] On or about March 21, 2011, SGI provided its section 7 response to the Applicant. The section 7 response stated the following:

Your request has been partially granted. Section 17(1)(b) states that SGI is not required to disclose information relating to consultations or deliberations between employees or officers of a government institution. Section 18(1)(f) 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. Section 22(a) of the Act states that SGI is not required to disclose information that is subject to solicitor-client privilege. 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.

[3] On May 20, 2011, my office received a request for review dated May 17, 2011 from the Applicant.

- [4] On or about June 6, 2011, my office provided notification to both parties of its intention to undertake a review. In the letter to SGI, my office requested a copy of the record and SGI's submission supporting the exemptions cited in the section 7 response to the Applicant including sections 17(1)(b), 18(1)(f), 22(a) and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).¹
- [5] On March 27, 2012, my office received a copy of the responsive record and SGI's submission. The package received from SGI included a compact disk (CD) containing all of the responsive records (both released and withheld). An Index of Records (Index) was also included.
- [6] SGI requested in its submission that it be kept "in confidence" and not be shared with the Applicant. However, it provided no arguments to support such a request. On April 13, 2012, my office requested SGI provide arguments to support its in camera request. On May 25, 2012 SGI provided a severed version of its submission to be shared with the Applicant.
- [7] On or about April 13, 2012, SGI released additional records to the Applicant.
- [8] On May 10, 2012, a meeting occurred between SGI and my office. It was clarified for SGI that the CD provided did not match the Index and that it was not clear which records were withheld and which had been released to the Applicant as the CD had every record responsive to the access request. As my office only deals with records withheld in full or in part from applicants, the review in this case could not occur until this was clarified by SGI. SGI agreed to correct this error so my office could continue its review.
- [9] On June 8, 2012, my office reminded SGI by way of email that a revised Index was still needed. It was requested again on August 14, 2012 and September 21, 2012.

¹*The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01 (hereinafter FOIP).

[10] On October 3, 2012, my office received from SGI, a new paper copy of all documents which had been withheld or were subject to partial redaction. This was meant to replace the CD provided earlier by SGI. A revised Index was also provided. However, there were still issues with the record and Index which prevented the review from fully proceeding.

[11] These issues were outlined in a letter from my office to SGI dated October 11, 2012:

On March 27, 2012 SGI provided a submission which included a copy of the records released to the applicant at that time. In order to determine what records remained outstanding I had to refer and compare the records released to the applicant on March 27, 2012 with the package received in our office on October 3, 2012. As well, I had to then compare this to the “Appendix B” and then to the original Index which was provided to our office on March 27, 2012. It was a very long and time consuming process.

There were additional things which made the matter confusing. Normally an Index contains page numbers of individual records.² We note the Index and Appendix B list redaction numbers instead. It took some time to figure out what records were being referred to as we were looking for page numbers. Appendix B does not list all the redacted numbers. There are some redacted numbers listed as “partially disclosed” but there are several more pages that were partially disclosed that are not listed (i.e. #31). Further, on #18 SGI has on the Index that it is relying on section 22(a) of FOIP but the record and Appendix B lists 17(1)(b)(i). It also took time to try to determine why SGI had redaction numbers listed on the Index but there was no section of FOIP listed as being relied on. After spending considerable time sorting out what records were withheld by SGI it appears to us that there was no section listed by SGI because SGI released the records. As you know, we only deal with records withheld from the applicant.

The confusion has caused considerable delay on this review. For future review files we may return those materials to SGI that are unclear and ask for further clarification. We encourage SGI to review its process for preparing materials (i.e. Index of Records, Submission etc.) to our office to determine where it can improve.

It appears from comparing all the records, the Index and the Appendix B the following records are being withheld in part or in full from the applicant:

²As referred to in my office’s resource entitled, *Helpful Tips: OIPC Guidelines for Public Bodies/Trustees in Preparing for a Review* at p. 7, available at: www.oipc.sk.ca/resources.htm.

- 130 pages under 17(1)(b)(i);
- 6 pages under 18(1)(f);
- 46 pages under 22(a); and
- 34 pages under 29(1).

This is a total of 216 pages subject to this review. If this is accurate, then we will only be considering the above noted exemptions in this review. Please confirm that this is correct.

[12] On January 30, 2013, SGI provided my office with a letter stating the following:

You had asked us to confirm if this was correct. I have gone through the record and can confirm that 130 pages are under 17(1)(b)(i) and 6 pages under 18(1)(f) are indeed correct. However, I found 48 pages corresponding to section 22(a) instead of 46, and 37 pages corresponding to s. 29(1) instead of 34 pages.

[13] Included with the letter from SGI was a second copy of the record and Index. Adding to the confusion, the second copy of the record again included pages which had been released to the Applicant previously.

[14] Further, upon review of the two records and two Indexes provided to my office, it became clear that the two packages did not match with those exemptions SGI had invoked to deny access to specific records.

[15] On or about April 19, 2013, my office provided SGI with its preliminary analysis. A number of recommendations were made to SGI. My office received SGI's response on May 27, 2013, indicating it would release a portion of what was recommended for release by my office. On June 11, 2013, my office received a response from the Applicant advising my office that he was not satisfied with the additional records received. I have therefore proceeded to issue this Review Report.

[16] Following release of additional records to the Applicant by SGI, the following recommendations from my office's preliminary analysis remain outstanding at the time of this Review Report:

- SGI release those records found to not meet the burden of proof in accordance with section 61 of FOIP. This included the following redactions: #18, #97, #100, #105, #141, #153, #166, #193 and #198. It is unclear whether SGI complied with this recommendation or if they continue to withhold these records from the Applicant.
- SGI continue to withhold those records found to qualify under section 17(1)(b)(i) of FOIP. This included the following redactions: #31, #34, #35, #38, #43, #90, #124, #128, #143, #147, #152, #158, #159, #167, #169, #171, #172, #174, #181, #185, #186, #189, #190, #209, #210, #212 and #219. It is unclear whether SGI complied with this recommendation and continues to withhold these records from the Applicant as SGI's response to my office did not address this recommendation.
- SGI release those portions of the records found not to qualify under section 17(1)(b)(i) of FOIP. This included the following redactions: #8, #9, #10, #33, #44, #168, #170, #173, #184, #214. SGI appears to have complied and released all but the information under the sections titled, *Your Questions*, and the personal information pursuant to section 29(1) of FOIP as recommended by my office.
- SGI release fully those records found not to qualify under section 17(1)(b)(i) of FOIP. This included the following redactions: #39, #41, #42, #45, #126, #129, #130, #144, #145, #146 and #215. SGI appears to have chosen not to comply with this recommendation and continues to withhold these records from the Applicant.
- SGI release those records found not to qualify under section 18(1)(f) of FOIP. This included the following redactions: #1, #2, #12, #175, #176 and #177. SGI released redaction numbers #1, #2 and #177. However, it continued to withhold #12, #175 and #176 from the Applicant.
- SGI continue to withhold those records found to qualify under section 22(a) of FOIP. This included the following redactions: #16, #25, #25A, #40, #46, #47, #49, #54, #57, #67, #69, #72, #74, #76, #79, #80, #82, #84, #86, #91, #92, #99, #104, #108, #110, #111, #112, #113, #115, #116, #118, #139, #154, #155, #165, #191, #200, #201, #202 and #203. However, SGI should release the email headers and any signature lines on the applicable redactions. It is unclear whether SGI complied with this recommendation as SGI's response to my office did not address this recommendation.
- SGI continue to withhold those records found to qualify under section 29(1) of FOIP. This included the following redactions: #20, #21, #22, #27, #77, #78, #85, #101, #114, #117, #119, #123, #125, #133, #134, #135, #150, #160, #162, #163, #164, #178, #180, #182, #195, #196, #197 and #205. It is unclear whether SGI complied with this recommendation as SGI's response to my office did not address this recommendation.

- SGI release those records found not to qualify under section 29(1) of FOIP. This included the following redactions: #23, #109, #182 and #199. It is unclear if SGI complied with this recommendation as again, SGI's response did speak to this recommendation.
- SGI continue to withhold the information on redaction #96 as it is the personal health information of an individual who is not the Applicant pursuant to *The Health Information Protection Act (HIPA)*.³ It is unclear if SGI complied with this recommendation as noted above as SGI's response did not speak to this.

[17] Also recommended in my office's preliminary analysis was that SGI:

- review its process for handling access to information requests and requests for review to ensure it is properly assembling the entire responsive record;
- release what is appropriate;
- properly mark and communicate to the Applicant and our office what it is withholding, the appropriate exemptions which apply to each page of the record; and
- that it is doing so in a timely fashion.

[18] SGI stated in its May 23, 2013 response to my office, received May 27, 2013, that:

...our office has taken into consideration the concerns your office has raised in regard to the preparation of the access requests and has amended our process to ensure it meets with your guidelines.

II RECORDS AT ISSUE

[19] It is clear from the Background section of this Review Report that SGI's organization of the record made it difficult to focus on a final number of responsive records. Rather, my office was required to focus on redaction numbers instead.

³*The Health Information Protection Act*, S.S. 1999, c. H-0.021 (hereinafter HIPA).

III ISSUES

1. **Did Saskatchewan Government Insurance establish which exemptions applied to each portion of the record?**
2. **Did Saskatchewan Government Insurance appropriately apply section 17(1)(b)(i) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**
3. **Did Saskatchewan Government Insurance appropriately apply section 18(1)(f) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**
4. **Did Saskatchewan Government Insurance appropriately apply section 22(a) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**
5. **Did Saskatchewan Government Insurance appropriately apply section 29(1) of *The Freedom of Information and Protection of Privacy Act* to the record in question?**
6. **Does the record contain “personal health information” and is *The Health Information Protection Act* engaged?**

IV DISCUSSION OF THE ISSUES

[20] SGI is a “government institution” within the meaning of section 2(1)(d) of FOIP and, therefore, is subject to FOIP.⁴

⁴This has also been determined in previous Office of the Saskatchewan Information and Privacy Commissioner (hereinafter SK OIPC) Review Reports F-2006-005 at [23] and F-2007-002 at [5] and Investigation Reports F-2013-002 at [11], F-2012-005 at [10], F-2010-001 at [18] and H-2004-001 at [17], available at: www.oipc.sk.ca/reviews.htm.

1. Did Saskatchewan Government Insurance establish which exemptions applied to each portion of the record?

[21] Prior to beginning this analysis, it is important to highlight the objective of FOIP which is as follows:

[11] I adopt and incorporate by reference the purpose that this office has ascribed to *The Freedom of Information and Protection of Privacy Act* (“the Act”) in Report 2004-003 [5] to [13]. I accept the direction of the Saskatchewan Court of Appeal that the basic policy of the Act is that **“disclosure, not secrecy is the dominant objective of the Act”**...

[12] The right of citizens to access records in the possession or under the control of public bodies is **a quasi-constitutional right of the “highest importance in the functioning of a modern democratic state”**...⁵

[emphasis added]

[22] I approach this Review Report with this objective in mind.

[23] Section 61 of FOIP provides a public body with the burden of proof in establishing that an exemption applies to the withheld records. Section 61 of FOIP states as follows:

61 In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned.

[24] I have referred to section 61 of FOIP in a number of my previously issued Review Reports.⁶ For example, in my Review Report F-2007-002 I discussed what is required by this section of FOIP:

[8] I provided guidance on what this office requires in order for the government institution to meet the legislative burden of proof in the *Helpful Tips* sheet, available on our website, www.oipc.sk.ca, under the *Resources* tab. In the *Helpful Tips* sheet, we advised consideration of the following information:

A government institution or local authority has the burden of proof if it claims that access should or must be refused under the FOIP Act or LA FOIP Act. The

⁵SK OIPC Review Report F-2006-001, available at: www.oipc.sk.ca/reviews.htm.

⁶SK OIPC Review Reports F-2007-002 at [6] to [9], F-2013-003 at [19] to [20], F-2013-005 at [16] to [29] and F-2004-005 at [25] to [26], available at: www.oipc.sk.ca/reviews.htm.

*burden is not on the applicant to establish that an exemption does not apply. This means that it is not enough to write the Commissioner and simply say "Access is denied because of section 19 [or some other mandatory or discretionary exemption]". **It is up to the government institution or local authority to 'make the case' that a particular exemption(s) applies. That means presenting reasons why the exemption is appropriate for the part of the record that has been withheld.***

[emphasis added]

[25] The following are some of the problems my office found with the duplicate copies of the record provided with regards to determining what exemptions SGI was relying on and conclusions reached:

- Redaction #40 is unclear. This is a record consisting of two pages. Both pages have been withheld. Both Indexes received cite section 22(a) of FOIP. Page 1 of the record cites section 22(a) of FOIP for both copies of the record received March 27, 2012 and again on January 30, 2013. Page 2 of the record for both copies received cites section 17(1)(b)(i) of FOIP. The submission provided by SGI argues section 22(a) of FOIP for both pages of redaction #40. It appears that SGI stamped page 2 of the record incorrectly with section 17(1)(b)(i) of FOIP.

As there are enough indicators to be assured that SGI likely intended for both pages of redaction #40 to be considered under section 22(a) of FOIP, I will review it only under section 22(a) of FOIP and not section 17(1)(b)(i) of FOIP.

- Redaction #90 is similar. It cites both sections 17(1)(b)(i) and 22(a) of FOIP. However, the Index from March 27, 2012 only cites section 22(a) of FOIP for this record and the Index for January 30, 2013 cites both sections. SGI must make efforts to address these inconsistencies between the record and its Indexes in order to properly make its case that the applicable exemptions apply.

For this record, I will consider both sections because they are both clearly marked on the pages.

- Further adding to the confusion, redaction #97 is marked as having been severed under section 22(a) and 29(1) of FOIP. The March 27, 2012 copy of the record has section 29(1) of FOIP scratched off and then written again next to it. The January 30, 2013 copy of the record has section 29(1) of FOIP written and then scratched off but not added again. The Index for March 27, 2012 cites section 29(1) of FOIP. The Index for January 30, 2013 cites section 22(a) of FOIP. The information severed on the page is the name of one individual. However, there doesn't appear to be anything linked to the name that would be of a personal nature.

As a result, the burden of proof has not been met by SGI. I recommend that this page of the record (redaction #97) be released to the Applicant.

- Redaction #141 from the record received March 27, 2012 was marked by SGI as having been withheld under sections 17(1)(b)(i) and 29(1) of FOIP. At the bottom, a paragraph is highlighted and handwritten is “redaction 29(1)”. However, the January 30, 2013 version has the same information highlighted with the handwritten note stating “sever 17(1)(b)(i)”. The March 27, 2012 Index lists section 29(1) of FOIP for this record and the January 30, 2013 Index cites sections 17(1)(b)(i) and 29(1) of FOIP. It’s not clear which section SGI is relying on. The information severed appears to relate to an injury or accident claim of an individual who is not the Applicant.

As a result, the burden of proof has not been met by SGI. I recommend that this portion of the record (redaction #141) be released to the Applicant. SGI should first sever just the name of the individual as this would sufficiently de-identify the information and who it relates to.

- Redactions #153 and #198 for both records are marked as having been severed under section 17(1)(b)(i) of FOIP. The January 30, 2013 version of the record has a line through section 17(1)(b)(i) of FOIP. The Index for March 27, 2012 cites section 29(1) of FOIP. The Index for January 30, 2013 cites section 17(1)(b)(i) of FOIP. The information severed on the page is the email address of an employee working for a consulting company. It is unclear if SGI is claiming 29(1) or 17(1)(b)(i) of FOIP.

As a result, the burden of proof has not been met by SGI. I recommend that these portions of the record (redactions #153 and #198) be released in full to the Applicant.

- Redactions #18, #100, #105 and #193 are all duplicates of the same severed information. SGI argued in its submission of March 27, 2012 that the information on all four records was exempt under section 22(a) of FOIP. However, on the actual records themselves, redactions #18, #105 and #193 are marked exempt under section 17(1)(b)(i) of FOIP. Redaction #100 is marked with section 22(a). The Index of March 27, 2012 lists section 22(a) for redaction #18, #100, #105 and #193. The Index of January 30, 2013 lists section 17(1)(b)(i) of FOIP for redaction #18, #105 and #193. It lists section 22(a) of FOIP for redaction #100. It is unclear which section is being relied on for the same information on four separate pages.

As a result, the burden of proof has not been met by SGI. I recommend that these pages of the record (redactions #18, #100, #105 and #193) be released in full to the Applicant.

- For redaction #166, SGI argued in its submission that this information was exempt from disclosure under section 17(1)(b)(i) of FOIP. However, the record itself shows the page marked as having been exempt under section 22(a) of FOIP.

The Index from March 27, 2012 lists this record as exempt under 17(1)(b)(i) of FOIP. The Index from January 30, 2013 lists this record as exempt under 22(a) of FOIP.

As a result, the burden of proof has not been met by SGI. I recommend that this page of the record (redaction #166) be released to the Applicant. However, SGI should first sever the personal information belonging to an individual who is not the Applicant.

- For redactions #39, #41, #42, #45, #126, #129, #130, #144, #145, #146 and #215, SGI appears to be claiming both sections 17(1)(b)(i) and 22(a) of FOIP. However, none of the pages are marked with section 22(a) of FOIP. They are only marked with section 17(1)(b)(i) of FOIP.

Further, the Indexes of both March 27, 2012 and January 30, 2013 cite only section 17(1)(b)(i) of FOIP for these redactions. Section 22(a) of FOIP is also not noted for these redactions on the Index provided to the Applicant with the section 7 response.

For these reasons, I will not consider these redactions under section 22(a) of FOIP. I will only consider section 17(1)(b)(i) of FOIP.

- Redaction #85 is marked by SGI as having been withheld under sections 22(a) and 29(1) of FOIP. The Index to the Applicant provided with the section 7 response cites both of these sections. The Index of March 27, 2012 cites only section 29(1) of FOIP. The Index of January 30, 2013 cites both sections 22(a) and 29(1) of FOIP.

The submission from SGI received March 27, 2012 argues section 22(a) of FOIP. Section 22(a) of FOIP is hand-written next to the severed information. So it would appear that SGI intended to apply section 22(a) of FOIP to this withheld portion of the record.

The information withheld are the names of individuals who have appeals with SGI. The names do not include the Applicant. This information would not appear to qualify for exemption under section 22(a) of FOIP. It is more likely that SGI intended to apply section 29(1) of FOIP but made an error in its preparation of the record for our office.

We would normally determine that the burden of proof has not been met where the public body is not clear on what exemption it is relying on. However, as the information appears to be personal information, I will address redaction #85 under section 29(1) of FOIP in this Review Report.

- Redaction #96 is marked by SGI as having been withheld under section 22(a) of FOIP. The Index to the Applicant provided with the section 7 response cites this section. The Index of March 27, 2012 cites only section 29(1) of FOIP. The Index of January 30, 2013 cites section 22(a) of FOIP.

The submission from SGI received March 27, 2012 lists this redaction under its arguments for section 22(a) but states it redacted as personal information.

The information severed appears to be information about an SGI employee related to the health of the employee's family member. This information would not qualify for exemption under section 22(a) of FOIP. In fact, it is more likely the personal health information of another individual who is not the Applicant. Personal health information is covered under section 2 of HIPA which SGI is subject.

I would normally determine that the burden of proof has not been met where the public body is not clear on what exemption it is relying on. However, as the information appears to be personal health information, I will address redaction #96 under the HIPA section later in this Review Report.

- Redaction #200 is marked by SGI with section 17(1)(b)(i) of FOIP. It is not marked in any way with section 22(a) of FOIP. Further, the Indexes of both March 27, 2012 and January 30, 2013 cite only section 17(1)(b)(i) of FOIP for this record. Section 22(a) of FOIP is also not noted for these records in the section 7 response to the Applicant which included an Index. There is also no arguments put forward in SGI's submission under section 17(1)(b)(i) of FOIP for redaction #200.

Redaction #200 appears to be a duplicate of redactions #25, #115, #154 and #201. These redactions were all marked properly with section 22(a) of FOIP. Further, redaction #200 is addressed under section 22(a) of FOIP of SGI's submission.

Therefore, I will consider redaction #200 under section 22(a) of FOIP and not under section 17(1)(b)(i) of FOIP.

[26] I find that SGI has failed to meet the burden of proof in accordance with section 61 of FOIP on the following portions of records because it did not properly identify the exemption relied on to withhold the records from the Applicant: redactions #18, #97, #100, #105, #141, #153, #166, #193 and #198. I recommend that these portions of the record be released to the Applicant.

2. Did Saskatchewan Government Insurance appropriately apply section 17(1)(b)(i) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[27] Section 17(1)(b)(i) of FOIP 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;

[28] SGI indicated it applied section 17(1)(b)(i) to a number of pages of the withheld record. In some cases, SGI withheld the page entirely relying on section 17(1)(b)(i) and on other pages, SGI severed some information on the pages and released the remainder to the Applicant.

[29] SGI stated in its submission to my office dated March 27, 2012 that:

Documents 8, 9, 10, 33, 44, 166, 168, 170, 173, 184 and 214

The following documents are all memorandum entitled “Request for Review by SGI Consultant”. These documents are prepared by a Bodily Injury Adjuster for the purpose of seeking direction from SGI’s Medical Consultant concerning a number of medical issues that require a response from a medical consultant. Ultimately, this response will assist the adjuster in determining [the Applicant’s] entitlement to benefits.

Given the interconnection between a claimant’s medical status and his or her entitlement to benefits under Part VIII of the [*The Automobile Accident Insurance Act*], SGI hires Medical Consultants to assist Bodily Injury Adjusters. Attached as Appendix B to this letter are the following documents from the Injury Manual available to all Bodily Injury Adjusters adjudicating claims for SGI:

1. Role of the Consultant;
2. When to Use Consultants; and
3. Checklist for Sending Files to Consultants.

In all cases, the advice is sought for the purpose of making a decision regarding benefit entitlement on the file, from a medical person hired by SGI for the purpose of providing this advice. Based on the above noted criteria, SGI submits this memorandum clearly falls within the above noted exception for disclosure. As a final note, SGI objects to the requirement to redact these documents as the factual presentation and selection are a reflection of the writer’s bias, concerns and opinion as to what remains critical for the purposes of the medical evaluation.

[30] I have formally considered section 17(1)(b)(i) in several previous Review Reports.⁷ Four of the five previous Review Reports involved SGI.

[31] In Review Report F-2007-002, I outlined the test used for determining if section 17(1)(b)(i) of FOIP applies to records. That test is outlined as follows:

[11] We examined the criteria required to rely on this exemption in Reports F-2004-001, F-2004-002, F-2005-004 and F-2006-004. In Report F-2006-004, we stated:

...

[31] In our Report F-2004-001, I determined that,

[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...A “deliberation” is a discussion of the reasons for and against an action by the persons described in this section...

[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.

[32] In my Review Report F-2004-002, these criteria were examined, and the following conclusions made:

- The exemption **does not** apply to:
 - a document reporting **factual information** regarding communications with an agent of an Applicant;
 - a document which makes non-substantive reference to other documents; and
 - e-mail **reporting certain matters of fact** relating to the Applicant.

⁷SK OIPC Review Reports F-2004-001 at [9] to [13], F-2004-002 at [8] to [12], F-2005-004 at [15] to [21], F-2006-004 at [29] to [38] and F-2007-002 at [10] to [15], available at: www.oipc.sk.ca/reviews.htm.

- The exemption **does** apply to:
 - a document seeking advice on a question related to the processing of the Applicant's claim; and
 - to a document in which certain action to be taken is discussed.⁸

[33] Redactions #8, #9, #10, #33, #44, #168, #170, #173, #184 and #214 are all titled, *Request for File Review by SGI Consultant*. All of the pages include the following sections which the Bodily Injury Adjuster or Personal Injury Representative at SGI fills out prior to sending it to the contracted medical consultant for SGI:

- Customer name;
- File number;
- Date of collision;
- Whether a previous medical consultant has reviewed the file;
- Accident circumstances;
- Injuries sustained;
- Any pre-existing conditions;
- Additional information for consideration;
- Customer's current level of functioning; and
- A question section where the Bodily Injury Adjuster can ask a specific question of the medical consultant.

[34] It appears that a number of these redactions contain information that would constitute "personal health information" pursuant to HIPA. However, because the information was obtained by SGI for the purpose of Part VIII of *The Automobile Accident Insurance Act* (AAIA),⁹ access provisions in Parts II and V of HIPA would not apply in this case. I discuss this further later in this Review Report.

[35] There does not appear to be any response from the medical consultants on the pages for the above redactions.

[36] Further, the pages contain a large amount of factual and background information largely about the Applicant for which he would already be aware. As the information on the pages largely consists of factual information about the accident, the only portions of the

⁸Paraphrased from SK OIPC Review Report F-2004-002 at [7], [11] and [12].

⁹*The Automobile Accident Insurance Act*, S.S. 1978, c. A-35.

records that may qualify as a consultation are the question sections which directly ask advice of the medical consultant. These questions appear to be advice sought as to the appropriateness of a particular proposal or suggested action.

[37] My office recommended that SGI release all but the information under the sections titled, *Your Questions*. As noted earlier, SGI appears to have complied with the recommendation.

[38] With regards to other records cited for exemption by SGI under section 17(1)(b)(i) of FOIP, SGI stated in its submission of March 27, 2012 the following:

Document 31 (duplicate 124 and 212)

This document evidences an email sent to [SGI Bodily Injury Adjuster], from [SGI Senior Official in Injury Department], instructing [SGI Bodily Injury Adjuster] on management of the expert, [an accident reconstructionist]. [SGI Senior Official in Injury Department]'s position requires that he assist the Bodily Injury Adjuster with the management of the file when his opinion is sought. As such, SGI submits this email falls within the exemptions concerning consultations and deliberation.

Document 34 (duplicate 185)

This notation was placed on file by [SGI Bodily Injury Adjuster], after discussions with [SGI Personal Injury Representative Special Assignment]. [SGI Personal Injury Representative Special Assignment] provides assistance and direction to the Bodily Injury Adjuster in the handling of her file. [SGI Bodily Injury Adjuster] is documenting how she will proceed with the file as a result of her consultation with [SGI Personal Injury Representative Special Assignment].

...

Document 38 (duplicate 189)

This notation was placed on file by [SGI Bodily Injury Adjuster]. This was an email sent to her from [SGI Manager, Regina South Claims]. [SGI Manager, Regina South Claims]' position required her to manage the Injury Department in Regina. As part of that responsibility, she provided advice and direction to the Bodily Injury Adjusters to assist them in managing their files. As such SGI submits this email falls within the exemptions concerning consultation and deliberation.

[39] I have dealt with this type of information before in my Review Report F-2004-002 as follows:

[6] One was an undated memorandum from one SGI employee to a senior SGI employee seeking advice on a particular question related to processing the claim in question. A second document is an email dated October 26, 1999 from one SGI employee to another which discussed certain action to be taken by one of those employees with respect to the claim of the Applicant.

[7] There were also three additional documents described as follows:

(a) Copy of letter from Yorkton Injury Claims to Saskatoon Injury Claims dated October 7, 1999. This appears to report certain factual information with respect to communication with an agent of the Applicant. This also appears to have been a cover letter that accompanied the transfer of a file from SGI office to another. In addition, handwriting appears at the bottom of the document which appears to be a list of certain health symptoms.

(b) December 12, 2002 email from one SGI employee to another which makes reference to certain other documents but the reference is skeletal and nonsubstantive.

(c) November 9, 2002 email from one SGI employee to another which records certain matters of fact relating to dependents of the Applicant.

...

[12] The two records described in paragraph [6] above meet the foregoing criteria. The three records described in paragraph [7] do not meet those criteria.

[40] The records in question in this case are similar to that noted above found to qualify for exemption under section 17(1)(b)(i) of FOIP. As such, the following redactions qualify for exemption under section 17(1)(b)(i) of FOIP: #31, #34, #38, #90, #124, #128, #143, #147, #152, #158, #181, #185, #189, #209, #210 and #212. I recommend that this information continue to be withheld because the records appear to contain what would qualify as consultation and deliberation according to the criteria established.

[41] This recommendation was made to SGI in my office's preliminary analysis. It is unclear whether SGI complied with this recommendation and continues to withhold these records from the Applicant as SGI's response to my office did not address this recommendation.

[42] With regards to other records cited for exemption under this section by SGI, in its submission dated March 27, 2012, SGI stated the following:

Document 35 (duplicates 159 and 186)

This is a letter soliciting the services of [an accident reconstructionist]. The letter was sent by [SGI Bodily Injury Adjuster]. The advice is sought for the purpose of making a decision regarding benefit entitlement on the file. Based on the above noted criteria, SGI submits this letter clearly falls within the exception for disclosure. As a final note, SGI objects to the requirement to redact these documents as the factual presentation and selection are a reflection of the writer's bias, concerns and opinion as to what remains critical for the purposes of the evaluation.

...

Documents 43, 167, 169, 171, 190 and 219

These documents contain the medical opinion of [a physician] as regards [the Applicant's] entitlement to benefits. These opinions are provided at the request of the Injury Department to assist the Bodily Injury Adjuster in determining entitlement to benefits. Once again, the advice is sought for the purpose of making a decision regarding benefit entitlement on the file, from a medical person hired by SGI for the purpose of providing this advice. Based on the above noted criteria, (for the same reasons the "Request for Review by SGI Consultant") documents have been exempted), SGI submits this opinion clearly falls within the above noted exception for disclosure. Again, SGI objects to the requirement to redact these documents as the factual presentation and selection are a reflection of the writer's bias, concerns and opinion as to what remains critical for the purposes of the medical evaluation.

...

Document 174

These documents contain the opinion of [an accident reconstructionist], hired by SGI to discuss the likelihood of injury on a low impact collision. This opinion was provided at the request of the Injury Department to assist the Bodily Injury Adjuster in determining entitlement to benefits. Once again, the advice is sought for the purpose of making a decision regarding benefit entitlement on the file from a consultant hired by SGI for the purpose of providing this advice. SGI submits this opinion clearly falls within the above noted exception for disclosure. Again, SGI objects to the requirement to redact these documents as the factual presentation and selection are reflection of the writer's bias, concerns and opinion as to what remains critical for the purposes of the evaluation.

[43] In my Review Report LA-2011-001, I found that communications involving outside parties where no officers or employees of the public body are involved would normally not constitute consultations or deliberations:

[74] For this exemption, I again reviewed the record page by page to determine, if on the face of the record, the criteria set out above exist. **In several cases the document involved communication from outside entities and thus does not meet the**

requirement clearly set out in the section that officers or employees of the local authority must be involved. In addition, in some cases purely factual information is being conveyed or there is communication of a decision made or the forwarding of a final draft of a document. In such cases, there are no consultations or deliberations and the exemption does not apply. However, many documents do demonstrate the “clearest of circumstances” for the application of this exemption.¹⁰

[emphasis added]

[44] I also considered this issue in my Review Report LA-2011-004 as follows:

[35] In Alberta IPC Order F2008-028, the following is relevant:

[para 198] Pages 675-684 consist of background information about Bill 27, or a summary and analysis of it, by particular associations or organizations. Pages 711-719 consist of a summary of legislative proposals by another organization. I considered whether the information on these pages fell under section 24(1)(a) and/or (b) on the basis that these groups are stakeholders with a particular knowledge, expertise or interest in relation to the topic, and were specifically engaged to develop advice, proposals, recommendations, analyses or policy options on behalf of the Public Body (Order F2008-008 at para. 44). While these groups may have a particular expertise or interest, **I have no evidence, on the face of these records, that the groups were specifically engaged by the Public Body in an advisory role. I therefore do not find that the information was specifically sought or expected from them by virtue of their positions, or even sought or expected at all.** As the Public Body has not established that the information on pages 675-684 and 711-719 falls under section 24(1), I intend to order disclosure of these pages (with the exception of the name that I found to be subject to section 17 on page 683).

...

[38] **There may be a case made that a ‘committee’ or ‘other body’ formed under section 55 and delegated particular powers or duties by City Council could be considered to be in a position of an ‘advisory role’, be ‘specifically engaged’ or ‘a sufficient connection’ to the local authority** within the contemplation of section 16(1)(a). However, the City would have to provide sufficient evidence that the Steering Committee in this case was created in accordance with section 55 of *The Cities Act*. However, in this case, the City had indicated to the Applicant (as noted earlier) that the committee was an “administrative, non-decision-making committee...” which suggests that it may not have been formed under section 55 or delegated any particular powers or duties on behalf of the local authority.¹¹

[emphasis added]

¹⁰SK OIPC Review Report LA-2011-001, available at: www.oipc.sk.ca/reviews.htm.

¹¹SK OIPC Review Report LA-2011-004, available at: www.oipc.sk.ca/reviews.htm.

- [45] It is possible to qualify as a consultation or deliberation where an external party is involved in communications with officers or employees of the government institution. However, the government institution must establish that the external party has an advisory role, is specifically engaged or has a sufficient connection to the public body.
- [46] In this case, there is an accident reconstruction consultant and a medical doctor contracted to provide accident reconstruction and medical advice to SGI. SGI has established in its submission the roles of these external parties as noted in its submission.
- [47] Upon review of the records, including redactions #35, #43, #159, #167, #169, #171, #172, #174, #186, #190 and #219, it appears the records are requests for the advice and corresponding responses from the external parties. Therefore, I find that these redactions qualify for section 17(1)(b)(i) of FOIP and should continue to be withheld.
- [48] This recommendation was made to SGI in my office's preliminary analysis. It appears that SGI has complied with this recommendation and continues to withhold these redacted portions from the Applicant.
- [49] However, it appears that SGI may not have exercised its discretion with regards to these records and considered releasing them even where this discretionary exemption applied. SGI's submission did not address the exercise of discretion. Therefore, I recommend that SGI properly exercise its discretion and consider releasing these records.
- [50] SGI stated the following in its submission dated March 27, 2012:

Documents 39, 41, 42, 45, 126, 129, 130, 144, 145, 146, 215

These documents are all "Summary for Appeal" documents prepared by the Bodily Injury Adjuster and Claims Management team for SGI Legal Department. The preparation of the Summary of Appeal is the responsibility of the Claims area handling the injury file and is required to be completed each time an appeal is initiated in either the court or the Automobile Injury Appeal Commission. The Summary of Appeal document is forwarded to SGI's Legal Department for the purpose of identifying the issues in dispute and clarifying any issues the Claims Department believe are critical for the purpose of obtaining legal advice and/or

assisting the lawyer in the resolution or defence of a claim decision. SGI is of the view that these documents fall within the meaning of consultation or deliberation under sub clause 17(1)(b)(i), and accordingly, the corporation is entitled to withhold access to these documents.

[51] As noted earlier in this analysis, these redactions were claimed under sections 17(1)(b)(i) and 22(a) of FOIP by SGI. However, as explained earlier, I will only be considering section 17(1)(b)(i) of FOIP for these redactions.

[52] A review of the redactions in question indicates they contain a summary of factual and background information about the motor vehicle accident and the summary conclusions of several different external parties (physician and accident reconstructionist). The subheadings on the records are as follows:

- Date of Loss;
- Injury;
- Reason for appeal;
- SGI's argument;
- Date of decision;
- SGI's basis for decision;
- Supporting Documents;
- Completed by; and
- Approved by.

[53] From a review of the redactions, it appears that much of the information in the record is similar to the information already reviewed in the records titled, *Request for File Review by SGI Consultant* which were found to not qualify under section 17(1)(b)(i) of FOIP because they contained factual information about the accident which would already be known to the Applicant.

[54] Alberta's *Freedom of Information and Protection of Privacy Act*¹² has a somewhat similar provision to Saskatchewan's section 17(1)(b)(i) of FOIP. Section 24(1)(b) of Alberta's Act states:

¹²Alberta's *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25.

24(1) The head 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,

(ii) a member of the Executive Council, or

(iii) the staff of a member of the Executive Council

[55] In Office of the Information and Privacy Commissioner of Alberta (Alberta IPC) Order F2004-026, the following is relevant as it considers parallel provisions in other jurisdictions:

[para 78] In defining the scope of the exceptions in sections 24(1)(a) and 24(1)(b), I have in mind that these exceptions are broader than those in parallel provisions in some other jurisdictions. The legislation in Ontario and British Columbia, for example, excepts only “advice and recommendations”. In Alberta, “advice, proposals, recommendations, analyses or policy options” are all excepted, as well as “consultations or deliberations”. Thus, **in my view, the exceptions in section 24(1)(b) embrace the substantive parts of communications that seek an opinion as to the appropriateness of particular proposals respecting a course of action to be decided, including any background materials that inform the advisors about the matters relative to which advice is being sought, and are thus inextricably interwoven with the questions being asked (“consultations”). This includes correspondence between government departments and third-party advisors, which was conveyed by a department to the Public Body for the purpose of providing background to enable the giving of advice.** They also embrace the reasons behind advice - “the reasons for and against an action” - as well as the advice itself, and possibly also the presentation of available alternatives (“policy options”). In my view, “deliberations” also includes comments that indicate or reveal reliance on the knowledge or opinions of particular persons, including those of the person making the communication. **However, these wider exceptions do not encompass non-substantive material which merely indicates that someone sought or gave advice or had a discussion about a course of action, without revealing substantive elements of the request or the advice, or the content of the discussion.**¹³

[emphasis added]

¹³Office of the Information and Privacy Commissioner of Alberta (hereinafter AB IPC) Order F2004-026, available at: www.oipc.ab.ca.

[56] In Alberta IPC Order F2009-008, the following is also helpful:

[para 30] **Section 24(1)(a) does not apply to the bare recitation of facts or summaries of information; facts may only be withheld if they are sufficiently interwoven with other advice, proposals, recommendations, analyses or policy options so that they cannot reasonably be considered separate or distinct** (Order 99-001 at paras. 17 and 18; Order F2007-013 at para. 108). **These same principles apply in the context of section 24(1)(b)** (Order 96-006 at p. 10 or para. 50; Order F2004-026 at para. 78). **Further, sections 24(1)(a) and (b) generally do not apply to information that merely reveals that advice, etc. was sought or given on a particular topic, or that consultations/deliberations on a particular topic took place** (Order F2004-026 at para. 71).

[para 31] Given the foregoing principles, **I considered whether the three to four introductory sentences that were withheld in each of Document 2 (memorandum), Document 3 (minutes) and Document 5 (e-mail) did not fall under section 24(1), on the basis that they merely reveal the topic under discussion or background factual information. I find that they reveal more than merely the topic under discussion, and that the background information is sufficiently interwoven with the advice, etc. or the consultations/deliberations, so as to fall under section 24(1).**

...

[para 33] **A public body is entitled to withhold under sections 24(1)(a) and (b) only the records or parts of them that reveal substantive information about the matter or matters on which advice was being sought or given, or about which the consultations or deliberations were being held;** other information cannot generally be withheld under section 24(1)(a) or (b), including the names of correspondents, dates and, in many cases, subject lines, as well as documents or parts of documents that express the fact that advice is being sought or given or that information is being conveyed, without revealing any substantive content (Order F2004-026 at para. 89).¹⁴

[emphasis added]

[57] So, in order for facts and background information to be considered under Alberta's equivalent section of Saskatchewan's section 17(1)(b)(i) of FOIP, the facts and background information must be sufficiently interwoven that they cannot reasonably be considered separate or distinct.

[58] I adopt a similar approach as that taken in Alberta.

¹⁴AB IPC Order F2009-008, available at: www.oipc.ab.ca.

[59] From a review of the records including redactions #39, #41, #42, #45, #126, #129, #130, #144, #145, #146, and #215, there does not appear to be any request for an opinion noted in the records. The records appear to simply be summaries of the file or case.

[60] Therefore, I find that redactions #39, #41, #42, #45, #126, #129, #130, #144, #145, #146, and #215 do not meet the test for section 17(1)(b)(i) of FOIP. These records should therefore be released to the Applicant.

[61] This recommendation was made to SGI in my office's preliminary analysis. It appears that SGI has chosen not to comply with this recommendation and continues to withhold these records from the Applicant.

3. Did Saskatchewan Government Insurance appropriately apply section 18(1)(f) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[62] Section 18(1)(f) of FOIP provides as follows:

18(1) A head may refuse to give access to a record that could reasonably be expected to disclose:

...

(f) information, the disclosure of which could reasonably be expected to prejudice the economic interest of the Government of Saskatchewan or a government institution;

[63] SGI cited section 18(1)(f) of FOIP on six pages of the record.

[64] I have considered this section in previous Review Reports.¹⁵ In my Review Report F-2006-002, I established what was needed from a public body in order to meet the test for this exemption:

¹⁵SK OIPC Review Reports F-2004-007 [26] to [38], F-2006-002 [104] to [111] and F-2012-001/LA-2012-001 at [66] to [71], available at: www.oipc.sk.ca/reviews.htm.

[107] An earlier Report by this office is helpful as to what test is applicable to determine if the exemption will or will not apply. In OIPC Report F-2004-007, the relevant section is as follows:

[28] In Report 92/009, our office held that the disclosure of records of the Saskatchewan Liquor Board dealing with the leasing agreements for liquor stores would not prejudice the economic interests of the Board. The names of the specific landlords who were individuals should not be disclosed according to my predecessor. This decision was cited and followed by our office in Report 94/002 when the amount of rent paid by Saskatchewan Archives Board was found not to prejudice the government's economic interests and consequently it was recommended that SPMC [Saskatchewan Property Management Corporation] release those records.

...

[31] The Federal Court concluded speculation was not sufficient and that the landlord had to demonstrate a reasonable expectation of harm. The Court further concluded that the evidence of the landlord "remains in the realm of speculation". I have also considered a number of other decisions interpreting the federal provisions.

...

[35] The Saskatchewan Act does not qualify the harm as "probable" as does the Access to Information Act provision. Consequently, I find that the standard or threshold test is somewhat lower in Saskatchewan than that which exists under the Access to Information Act. Nonetheless, I find that there could not be a reasonable expectation of harm in any event based on the facts as we understand them.

...

[38] I find that SPMC has failed to meet its burden of proof of showing that the disclosure of the records in question could reasonably be expected to prejudice the economic interest of SPMC.

[108] The above demonstrates that SRC does not have to prove that the harm is probable, but **needs to show that there is a "reasonable expectation of harm" if any of the information/records are released.**

[emphasis added]

[65] In order to meet the threshold, SGI must demonstrate that there is a reasonable expectation of harm in order for the exemption to apply to the withheld records.

[66] From a review of the six pages involved, it appears that SGI severed information referred to as “reserve amounts” on each page and released the remainder of the records to the Applicant. In its submission of March 27, 2012, SGI states the following:

As an insurance company, SGI establishes reserve amounts for each accident or claim held by the company. These amounts anticipate the value of the claim and are constantly updated and reviewed as facts change; therefore, they may not be an accurate reflection [sic] of the claim at this time. Reserve amounts are used by the company to evaluate its claims experience (which may be important for maintaining a competitive market position) and assist in establishing premium amounts charged. A reserve may or may not be a reflection of the benefit amount paid to the insured. Accordingly, releasing this information will prejudice or undermine SGI’s competitive advantage. SGI takes the position that reserve information is exempt from disclosure pursuant to clause 18(1)(f) for this reason.

[67] Nothing further was provided from SGI. There is nothing clarified in SGI’s submission that explains what harm would come from the release of the reserve amounts. There is simply the explanation of what the reserve amounts are and an assertion by SGI that releasing the information will “prejudice or undermine SGI’s competitive advantage.”

[68] Section 61 of FOIP places the burden of establishing that the exemption applies on the public body. Therefore, the burden of establishing that the record should be withheld under section 18(1)(f) of FOIP is on SGI.

[69] Therefore, I find that SGI has failed to meet the burden of proof in establishing that the disclosure of the records in question could reasonably be expected to prejudice the economic interest of SGI. I recommend release of the six pages cited for exemption by SGI under section 18(1)(f) of FOIP. This includes redactions #1, #2, #12, #175, #176 and #177.

[70] This recommendation was made to SGI in my office’s preliminary analysis. It appears that SGI has complied in part with this recommendation by releasing redactions #1, #2 and #177. However, it continues to withhold redactions #12, #175 and #176 from the Applicant.

4. Did Saskatchewan Government Insurance appropriately apply section 22(a) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[71] Section 22(a) of FOIP provides as follows:

22 A head may refuse to give access to a record that:

(a) contains information that is subject to solicitor-client privilege;

[72] SGI cited section 22(a) of FOIP on a number of pages of the record. Further, SGI stated in its submission of March 27, 2012 the following:

Document 16

This file notation authored by [SGI Manager Head Office Injury] outlines her discussion with [SGI lawyer]. This documents the legal advice being provided to the Injury Department by [SGI lawyer] to assist SGI in determination of [the Applicant's] benefit entitlement and outlines the legal reason for withdrawing an appeal decision letter sent to [the Applicant] by SGI.

Documents 25, 25A and duplicates 115, 154, 200 and 201

Documents evidence file notations placed on file by [SGI Bodily Injury Adjuster] outlining email instructions from [SGI's lawyer]...

Documents 40, 46, 49 and 86

This is solicitor work product. File notes or summaries prepared by the solicitor for her/his benefit...

Documents 54, 57, 74, 79, 80, 82, 84, 90, 91, 92, 99, 104, 108, 110, 111, 113, 112, 118, 155, 191, 202 and 203

These varied emails between [SGI lawyer] and the Injury Department staff concerning the handling of [the Applicant's] file are part of the "continuum of communication between solicitor and client...where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required." SGI claims solicitor/privilege over these emails.

...

Document 76

The handwritten notes on this document are the work product of [SGI lawyer]...

[73] In my Review Report F-2012-003, I previously considered section 22(a) of FOIP and set out the test to apply in order for records to qualify under section 22(a) of FOIP:

[67] In my Report LA-2011-001, I discussed the solicitor-client exemption found in LA FOIP that is almost identical to that in FOIP. The report stated:

...

[52] The primary court case on solicitor-client privilege is Canada v. Solosky, which established the following three part test:

- i) a communication between solicitor and client;
- ii) which entails the seeking or giving of legal advice; and
- iii) which is intended to be confidential by the parties.

[68] I will apply this test to the portions Records identified as being exempt pursuant to section 22(a) by the Ministry.¹⁶

[74] I will now apply this test to the record in question.

(i) Is it a communication between solicitor and client?

[75] In my Review Report F-2012-003, I consider the parameters of this question:

[67] In my Report LA-2011-001, I discussed the solicitor-client exemption found in LA FOIP that is almost identical to that in FOIP. The report stated:

[49] My Report F-2005-002 focused largely on legal fees, but the reference in that Report to the principles set out in Former Commissioner Rendek's Report 2003/004 is relevant:

- a) all communications, verbal or written, of a confidential character, between a client and a legal advisor directly related to the seeking, formulating or giving of legal advice or legal assistance...are privileged; and
- b) all papers and materials created or obtained specifically for the lawyer's 'brief' for litigation, whether existing or contemplated are privileged.

[50] Also in my Report F-2005-002, the court decision of Descoteaux v. Mierzwinski was discussed: "Mr. Justice Lamer advocated a very liberal approach to the scope of privilege by extending it to include **all communications made 'within the framework of the solicitor-client relationship'**."

¹⁶SK OIPC Review Report F-2012-003, available at: www.oipc.sk.ca/reviews.htm.

[51] I referenced Alberta Adjudication Order #3 dated March 13, 2003 in my Report F-2005-002. Mr. Justice McMahon stated that “Where legal advice of any kind is sought...the communications relating to the purpose, made in confidence by the client, are at his instance permanently protected from disclosure...”

[emphasis added]

[76] Upon review of all of the records cited for exemption under section 22(a) of FOIP, they all appear to be communications between the SGI solicitor and SGI employees.

[77] Although, redactions #76, #116, #40, #46, #49 and #86 do not appear to be communication directly between a solicitor and SGI employees, these records are on the Applicant’s file as part of the legal advice sought during file management. The file appears to be managed by the Injury Department with assistance from the Legal Department when needed.

[78] Upon review of all of the records cited by SGI for exemption under section 22(a) of FOIP, they all appear to be communications between the SGI solicitor and SGI employees. Therefore, the records qualify for the first part of the test.

(ii) Do these portions of the records entail the seeking or giving of legal advice?

[79] FOIP does not define “legal advice”. However, in reviewing Alberta IPC Order 96-017, it provided a definition of legal advice for its purposes as follows:

[23.] In Ontario Order 210, [1990] O.I.P.C. No. 71, “legal advice” has been defined to include “**a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications.**” I accept that definition.

...

[38] Section 26(1)(b) allows an exception for information prepared in relation to a matter involving the provision of legal services. As such, the section is broader than solicitor-client privilege. Neither British Columbia nor Ontario has a similar section in its legislation.¹⁷

[emphasis added]

¹⁷AB IPC Order 96-017, available at: www.oipc.ab.ca.

[80] I considered this Alberta definition in my Review Report F-2012-003.¹⁸ I also noted Alberta IPC Order 98-016 in Review Report F-2012-003 as follows:

[98] In addition, Alberta IPC Order 98-016 (also noted above) stated:

[para 13.] In Order 96-017, I said that I intend to give “legal services” its ordinary dictionary meaning. As such, “legal services” would include any law-related service performed by a person licensed to practice law. I also said that section 26(1)(b) allows an exception for information prepared *in relation to* a matter involving the provision of legal services.

[81] I accept this definition of legal advice and legal services for our purposes.

[82] In my Review Report F-2012-003, I advised public bodies that email headers (which generally contain the names of employees, dates and subject lines) would most likely not qualify for exemption under section 22(a) of FOIP.¹⁹

[83] Therefore, I recommend that SGI release the email headers and any signature lines on redactions #46, #47, #54, #57, #67, #69, #72, #74, #76, #79, #80, #82, #84, #91, #92, #99, #104, #108, #110, #111, #112, #113, #115, #116, #118, #139, #154, #155, #165, #200, and #202.

[84] Further, the remaining information on all of the records cited for exemption by SGI under section 22(a) of FOIP appear to entail the seeking or giving of legal advice. Therefore, the records qualify for the second part of the test.

(iii) Are these portions of the record intended to be confidential by the parties?

[85] SGI’s submission of March 27, 2012 did not speak specifically to the issue of confidentiality and section 22(a) of FOIP.

[86] In my Review Report F-2005-002, I considered the issue of confidentiality as follows:

¹⁸SK OIPC Review Report F-2012-003 at [96] to [97].

¹⁹*Supra* note 16 at [73] and [76].

[29] Mr. Rendek's discussion of section 22 in that Report is as follows:

The Federal Court of Appeal followed Canadian Jewish Congress v. Canada, [1996] 1 F.C. 268 (T.D.), in finding that since there was no definition of "solicitor-client privilege" in the Act, the common law definition should be followed. The Court adopted the definition of solicitor-client privilege formulated by the Exchequer Court in Susan Hosiery Ltd. v. Minister of National Revenue [1969] 2 Ex. C.R. 27, as follows:

(a) all communications, verbal or written, of a confidential character, between a client and a legal adviser directly related to the seeking, formulating or giving of legal advice or legal assistance (including the legal adviser's working papers, directly related thereto) are privileged; and

(b) all papers and materials created or obtained specifically for the lawyer's "brief" for litigation, whether existing or contemplated are privileged.

The Court also adopted the rationale for solicitor-client privilege as enunciated by Mr. Justice Lamer (as he then was) in Descoteaux v. Mierzwinski, [1982] 1 S.C.R. 860, as follows:

1. The confidentiality of communications between solicitor and client may be raised in any circumstances where such communications are likely to be disclosed without the client's consent.

2. Unless the law provides otherwise, when and to the extent that the legitimate exercise of a right would interfere with another person's right to have his communications with his lawyer kept confidential, the resulting conflict should be resolved in favour of protecting the confidentiality.

3. When the law gives someone the authority to do something which, in the circumstances of the case, might interfere with that confidentiality, the decision to do so and the choice of means of exercising that authority should be determined with a view to not interfering with it except to the extent absolutely necessary in order to achieve the ends sought by the enabling legislation.

4. Acts providing otherwise in situations under paragraph 2 and enabling legislation referred to in paragraph 3 must be interpreted restrictively.²⁰

[emphasis added]

[87] In Alberta IPC Order F2007-008 the following is helpful with regards to confidentiality:

²⁰SK OIPC Review Report F-2005-002, available at: www.oipc.sk.ca/reviews.htm.

[para 13] The top half of page 11 is also not a communication with the lawyer, but it is a communication between two Public Body officials that discusses and comments on the lawyer's advice. In Orders 96-020 and 99-013, the former Commissioner said that solicitor-client privilege applies to information in written communications between officials or employees of a public body in which the officials or employees quote or discuss the legal advice given by the public body's solicitor.

[para 14] I also accept that the communications were intended to be confidential. This is indicated by express statements of an intention of confidentiality on many of the records. As well, I agree with the Public Body that confidentiality in this case is implicit from the nature of the documents themselves. In Order F2004-003, Adjudicator Bell said (at para 30):

... it is implicit in the circumstances under and purposes for which the legal advice was being sought or given in this case that the communications were intended to be confidential.²¹

[88] On the face of the records, there is nothing explicit that suggests the contents were meant to be confidential, except for redaction #40 which has at the top of the page in bold text the following heading: "Privileged and confidential lawyer/client communication".

[89] This would indicate that the communication was apparently intended to be confidential and may meet the third part of the test.

[90] Upon review of the remainder of the records, based on the content and nature of the information, it appears that they would also qualify as there is an implicit expectation of confidentiality. Therefore, the records appear to meet the third part of the test for section 22(a) of FOIP.

[91] In conclusion, I find that all of the records cited for exemption under section 22(a) of FOIP qualify for the exemption and should continue to be withheld. This includes the following redactions: #16, #25, #25A, #40, #46, #47, #49, #54, #57, #67, #69, #72, #74, #76, #79, #80, #82, #84, #86, #91, #92, #99, #104, #108, #110, #111, #112, #113, #115, #116, #118, #139, #154, #155, #165, #191, #200, #201, #202 and #203.

²¹AB IPC Order F2007-008, available at: www.oipc.ab.ca.

[92] However, it appears that SGI may not have exercised its discretion with regards to these records and considered releasing them even where I have found the discretionary exemption applied. SGI's submission does not address the exercise of discretion. Therefore, I recommend that SGI properly exercise its discretion and consider releasing these portions of the record.

[93] I also recommend, however, that SGI release the email headers and any signature lines on redactions #46, #47, #54, #57, #67, #69, #72, #74, #76, #79, #80, #82, #84, #91, #92, #99, #104, #108, #110, #111, #112, #113, #115, #116, #118, #139, #154, #155, #165, #200 and #202, as this would not qualify as solicitor-client privileged information.

[94] These recommendations were made to SGI in my office's preliminary analysis. It is unclear if SGI has complied with the recommendation to continue withholding the recommended records but to release email headers and signature lines.

5. Did Saskatchewan Government Insurance appropriately apply section 29(1) of *The Freedom of Information and Protection of Privacy Act* to the record in question?

[95] Section 24 of FOIP defines "personal information" as follows:

24(1) Subject to subsections (1.1) and (2), "**personal information**" means personal information about an identifiable individual that is recorded in any form, and includes:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) **Repealed.** 1999, c.H-0.021, s.66.

(d) any identifying number, symbol or other particular assigned to the individual, other than the individual's health services number as defined in *The Health Information Protection Act*;

(e) the home or business address, home or business telephone number or fingerprints of the individual;

(f) the personal opinions or views of the individual except where they are about another individual;

(g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

(h) the views or opinions of another individual with respect to the individual;

(i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;

(j) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

(1.1) "Personal information" does not include information that constitutes personal health information as defined in *The Health Information Protection Act*.

(2) "**Personal information**" **does not include** information that discloses:

(a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a government institution or a member of the staff of a member of the Executive Council;

(b) the salary or benefits of a legislative secretary or a member of the Executive Council;

(c) the personal opinions or views of an individual employed by a government institution given in the course of employment, other than personal opinions or views with respect to another individual;

(d) financial or other details of a contract for personal services;

(e) details of a licence, permit or other similar discretionary benefit granted to an individual by a government institution;

(f) details of a discretionary benefit of a financial nature granted to an individual by a government institution;

(g) expenses incurred by an individual travelling at the expense of a government institution.

(3) Notwithstanding clauses (2)(e) and (f), “**personal information**” includes information that:

(a) is supplied by an individual to support an application for a discretionary benefit; and

(b) is personal information within the meaning of subsection (1).

[emphasis added]

[96] Where the information qualifies as personal information, section 29(1) of FOIP sets out a rule for disclosure 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.

[97] SGI cited section 29(1) of FOIP on a number of records. SGI severed what it determined to be personal information of another identifiable individual other than the Applicant as defined under section 24(1) of FOIP.

[98] In SGI’s submission received March 27, 2012, it stated the following:

Documents: 20, 21, 22, 23, 109, 114, 195, 196 and 197

[The Applicant] was involved in a motor vehicle... This was a low impact collision. SGI sought to locate the vehicle for the purpose assessing [sic] any damages to that vehicle. The name redacted in these documents, [the third party] is the current name of the owner of the vehicle that hit [the Applicant]. This person did not own the vehicle at the time that vehicle was involved in a collision with [the Applicant]...

Documents 23, 109, 182 and 199

The redacted text contains the contact information of [an accident reconstructionist] consulted by SGI in this manner. SGI has no objection to the release of this information if your office deems it appropriate. Unfortunately, the Act does not have

the “business card” exemption that is available under *The Personal Information and Electronic Documents Act* that would otherwise preclude the redaction of this information.

Documents 27 and 123

The only text in these documents that should be redacted is the discussion concerning [the third party] injury claim (as this is third party information)...

[99] From an examination of the records in question, it appears that SGI severed the following types of information:

- a) Names of individuals (redactions: #20, #21, #22, #114, #195, #196, and #197);
- b) Contact information for an individual working in a private business (redactions: #23, #109, #182, and #199);
- c) Details of other individuals’ accident claims, health claims or matters before the Automobile Injury Appeal Commission – who are not the Applicant (redactions: #27, #77, #78, #85, #101, #119, #123, #134, #135, #163, #178, #182, and #205);
- d) Details of the vehicle information for another individual who is not the Applicant – includes vehicle information and contact information (redactions: #117 and #164); and
- e) Addresses and telephone numbers of individuals identified and unidentified (redactions: #125, #133, #150, #160, #162 and #180).

[100] I will address each separately starting with the first one: the severing of the names by SGI.

a) Names of individuals

[101] In my Review Report F-2012-006, I considered whether names alone constitute personal information under section 24(1) of FOIP:

[146] In previous Commissioner Rendek’s Review Report 2003/014, he stated that:

[26] The remaining deletions involved names of third parties who either correspond with the government or provided input to the government in the decision-making process. Pursuant to section 24(1)(k), **the name by itself is not personal information.** Where a name appeared in these documents and was

deleted, it was done so incorrectly. These names should have been disclosed. The information with the names, other than the addresses and telephone numbers, is not personal information under section 24 nor would disclosure of the names reveal personal information about the individual...

[147] This is consistent with other jurisdictions. In *Griffiths v. Nova Scotia (Education)*, [2007] NSSC 178, it was found that releasing the names by itself did not constitute personal information unless release of the name revealed personal information about the individuals:

[24] The appellant refers to *Noel v. Great Lakes Pilotage Authority Ltd.*, [1988] 2 F.C. 77 (T.D.), where the Federal Court ordered disclosure of a list of names of individuals who held certificates to operate ships. The appellant was seeking the names of masters and watch officers who were not subject to compulsory pilotage. **The Court determined that releasing only the names did not constitute the release of personal information unless the disclosure of the name itself would reveal information about the individual.** The disclosure of the names would not of themselves reveal any employment history. The respondent maintains that the Court in *Noel* did not decide that the federal provisions are similar to s. 20(4); rather, the list was released because the Court found that the names in question were not personal information. **In fact, the Court concluded that, pursuant to the Federal Privacy Act, an individual's name did not constitute personal information unless disclosure of the name itself would reveal personal information about the individual.** It was open to the authority to provide the names with no further detail, which would indicate that the individuals named met the requirements of the relevant provision.

[148] **For example, the name combined with the home address, home phone number and/or ages of the individuals would constitute personal information under sections 24(1)(a), (d), (e) and (k) of FOIP.**

[149] The information in question needs to be information of a personal nature in order to qualify as personal information under section 24(1).²²

[emphasis added]

[102] Upon review of the record, it appears that SGI severed the names of individuals who are not employees of SGI or of a private business. As noted above, the name by itself would not be personal information unless there is a linkage of the name to other details of a personal nature contained within the record.²³

²²SK OIPC Review Report F-2012-006, available at: www.oipc.sk.ca/reviews.htm.

²³Pursuant to section 24(1)(k)(i) of FOIP.

[103] It appears from a review of the record that if the name were released in this case it would be possible for the Applicant to link the name with other details about the individual of a personal nature already released to the Applicant. With release of any names, the Applicant could piece the information together resulting in an identifiable individual.

[104] Therefore, I recommend that the following pages continue to have the names withheld: redactions #20, #21, #22, #114, #195, #196 and #197.

[105] I will now consider the severed contact information for an individual working in private business.

b) Contact information for an individual working in a private business

[106] For redactions #23, #109, #182 and #199, SGI severed the work address, phone number, fax number and email address of the consultant hired to do the accident reconstruction.

[107] SGI has indicated it would be prepared to release this information if I felt it would be appropriate. I considered business card information in my Review Report LA-2010-001:

[63] I am **not recommending that the City withhold the names or business contact information (i.e. business card information) for its officers or employees, its consultants** or others (i.e. government employees) as this does not constitute personal information by reason of section 23(2).²⁴

[emphasis added]

[108] Further, in my Review Report LA-2013-002, I also noted the following:

[80] In order to qualify as personal information under LA FOIP, **the information in question must be of a personal nature**. This distinction was discussed in my Review Report F-2010-001:

[126] Further on this question, I found Ontario IPC Order PO-2420 of assistance in this regard:

²⁴SK OIPC Review Report LA-2010-001, available at: www.oipc.sk.ca/reviews.htm.

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225]. However, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225]

[128] **For these reasons, the names of individuals and views represented do not constitute his/her personal information because it is not information about him/her. Therefore, I recommend release of all business card information regardless of the type of agency the individual represents.** The exception is in respect to submissions of private citizens to which Health has properly withheld email addresses and names of said. Though the personal opinions of the authors, Health should nonetheless release the content of the emails as without names and email address, no individuals are identifiable.²⁵

[emphasis added]

[109] In order to qualify as personal information the information must be of a personal nature. Business card information is not personal in nature. Therefore, I recommend that SGI release the severed business card information on redactions #23, #109, #182 and #199.

[110] I will now deal with the details of accident claims, health claims or matters before the Automobile Injury Appeal Commission involving other individuals who are not the Applicant.

c) Details of other individuals' accident claims, health claims or matters before the Automobile Injury Appeal Commission – who are not the Applicant

[111] SGI severed the claim numbers, names, details of claims, invoice amounts and dates on the following redactions: #27, #77, #78, #85, #101, #119, #123, #134, #135, #163, #178, #182, and #205.

²⁵SK OIPC Review Report LA-2013-002, available at: www.oipc.sk.ca/reviews.htm.

[112] Section 24(1)(d) of FOIP provides that “any identifying number, symbol or other particular assigned to an individual, other than the individual’s health services number”, qualifies as personal information.

[113] Further, section 24(1)(k)(i) of FOIP provides that “the name of the individual where it appears with other personal information that relates to the individual” qualifies as personal information.

[114] None of the names or claim numbers on the other severed pages are the Applicant’s. Therefore, in accordance with sections 24(1)(d) and 24(1)(k)(i) of FOIP, the information severed on redactions #27, #77, #78, #85, #101, #119, #123, #134, #135, #163, #178, #182, and #205 constitutes personal information of individuals other than the Applicant and should continue to be withheld.

[115] I will now address the details of the vehicle information for another individual who is not the Applicant.

d) Details of the vehicle information for another individual who is not the Applicant – includes vehicle information and contact information

[116] Redaction #117 is a printed sheet from a computer database titled, *CURRENT VIN*. It appears to be a database where the vehicle identification number (VIN) can be keyed in and the database generates a print out of the owner, address of owner, birth date, plate number, vehicle make and model, registration information and insurance amount. SGI withheld this page in its entirety.

[117] Redaction #164 is a page titled, *Vehicle Information Sheet*. SGI released the majority of the page but severed the home address of an individual, home phone number and his/her SGI claim deductible amount and vehicle identification number.

[118] Sections 24(1)(a), 24(1)(b), 24(1)(d), 24(1)(e) and 24(1)(k)(i) cover the information in redaction #117 and #164 because it includes an individual’s name combined with birth

date, home address, financial transactions with SGI for insurance and numbers uniquely assigned to the individual. Therefore, redaction #117 and #164 qualify as personal information under section 29(1) of FOIP and should continue to be withheld by SGI.

e) Addresses and telephone numbers of individuals identified and unidentified

[119] Finally, SGI severed the addresses and phone numbers of individuals identified and unidentified on redactions #125, #133, #150, #160, #162 and #180.

[120] With regards to the unidentified numbers, SGI stated in its submission of March 27, 2012 the following:

Document 125

Redacted are a series of telephone numbers. My office is unable to determine to whom these telephone numbers belong. They have been redacted as personal information belonging to a third party.

[121] From a review of redaction #125 it appears that the SGI Personal Injury Representative may have handwritten numerals on a letter to the Applicant. The severed information appears to be a number of handwritten phone numbers on the letter. There is nothing on the record to indicate who the phone numbers belong to. Everything was released by SGI on this record except two hand-written phone numbers. The phone numbers do not appear to belong to the Applicant.

[122] If the phone numbers belonged to employees of a government organization, local authority, trustee or private business, these numbers would not qualify as personal information but would be considered business card information. As noted earlier, such information would not qualify as personal information.

[123] However, it is not clear who these phone numbers belong to. Therefore, pursuant to section 24(1)(e) of FOIP, the phone numbers could qualify as personal information of an individual and should continue to be withheld because there are ways to connect a name to the unknown phone numbers (i.e. internet searches). The ability to connect a name to

the phone number enables the information to be about an identifiable individual. To err on the side of caution, I recommend SGI continue to withhold them.

[124] On the remainder of the redactions (#133, #150, #160, #162 and #180), SGI appears to have severed the home addresses and home phone numbers of SGI claimants. On redaction #133, SGI also severed the driver's license number and date of birth of an individual.

[125] This information would qualify as personal information under the following sections:

- section 24(1)(a) of FOIP – date of birth;
- section 24(1)(d) of FOIP – driver's license number; and
- section 24(1)(e) of FOIP – home address and home phone number.

[126] Therefore, I find that SGI properly applied section 29(1) of FOIP to redactions #125, #133, #150, #160, #162 and #180. This severed information should continue to be withheld by SGI.

[127] This addresses all of the redactions under section 29(1) of FOIP.

[128] The recommendations in this section were made to SGI in my office's preliminary analysis. It is unclear if SGI complied with these recommendations or not.

6. Does the record contain “personal health information” and is *The Health Information Protection Act* engaged?

[129] As noted earlier in this Review Report, SGI did not cite any sections of HIPA on any of the materials provided to my office. However, upon review of the records, there appeared to be information cited for exemption by SGI under section 29(1) of FOIP which upon closer examination clearly constitutes “personal health information” under HIPA.

[130] SGI is subject to HIPA pursuant to section 2(t)(i) of HIPA. This section states the following:

2 In this Act:

...

(t) “**trustee**” means any of the following that have custody or control of personal health information:

(i) a government institution;²⁶

[131] HIPA defines “personal health information” at section 2(m) as follows:

2 In this Act:

...

(m) “**personal health information**” means, with respect to an individual, whether living or deceased:

(i) information with respect to the physical or mental health of the individual;

(ii) information with respect to any health service provided to the individual;

(iii) information with respect to the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;

(iv) information that is collected:

(A) in the course of providing health services to the individual; or

(B) incidentally to the provision of health services to the individual; or

(v) registration information;

[132] I reviewed all of the records (redactions) which I have recommended for release by SGI to identify personal health information.

[133] Personal health information was found on redaction #166. The information involved was addressed earlier in this Review Report.

²⁶Saskatchewan Government Insurance was found to be a ‘government institution’ at [20] of this Review Report and is therefore subject to HIPA.

[134] In addition, the following redactions contain what appears to be personal health information: #8, #9, #33, #41, #45, #126, #139, #144, #145, #146, #170, #173, #184 and #214. All of these redactions contain the same sentence that appears to be personal health information of another individual who is not the Applicant pursuant to section 2(m)(i) of HIPA.

[135] Therefore, I recommend that this information should be withheld by SGI. However, it would correctly have to be withheld under section 29(1) of FOIP as suggested by SGI and not section 27(1) of HIPA. The reason for this is section 4(4)(b) of HIPA which states:

4(4) Subject to subsections (5) and (6), Parts II, IV and V of this Act do not apply to personal health information obtained for the purposes of:

...

(b) Part VIII of *The Automobile Accident Insurance Act*;

[136] I refer to and incorporate here my previous analysis on this paramountcy provision.²⁷ In my recent Investigation Report F-2013-002, I clarified the following which is relevant and applicable in this case:

[16] I refer to, and incorporate here, my analysis from my recent Investigation Report F-2012-005. In that Investigation Report, I found the following which is applicable in this case also:

- All Parts of FOIP apply to the personal information collected, used and/or disclosed as it relates to the adjudication of the Complainant's injury claim file.
- **Parts II, IV and V of HIPA do not apply as it relates to the Complainant's personal health information collected, used and/or disclosed by the insurer (SGI) for the purpose of Part VIII of the AAIA.**
- The remaining Parts of HIPA still apply including section 16 which requires a trustee to have appropriate administrative, technical and physical safeguards in place to protect personal health information. However, this does not appear to be at issue in this case.

²⁷SK OIPC Investigation Report F-2012-005 at [16] to [21], available at: www.oipc.sk.ca/reviews.htm.

- Where HIPA does not apply to the personal health information, FOIP will apply and the information would be treated as personal information instead.

[17] Therefore, the applicable law in this case is FOIP.

[emphasis added]

[137] The information in question appears to be information that was obtained by SGI for purposes of Part VIII of AIA. Therefore, the access provisions in HIPA would not be engaged for these records. Rather, the information would be treated as personal information under section 24(1) of FOIP. My Investigation Report F-2013-002 highlights this point:

[23] Therefore, even though this type of information would normally be personal health information under HIPA, when it is used by SGI for the adjudication of the injury claim it would be treated as personal information under FOIP. This is due to the paramouncy provisions noted earlier. The above information would be considered personal information pursuant to section 24(1)(k) of FOIP because it is the individual's name combined with other information that is personal in nature.

[138] Therefore, I find that the information in the following redactions contain what appears to be personal information pursuant to section 24(1)(k) of FOIP: #8, #9, #33, #41, #45, #126, #139, #144, #145, #146, #170, #173, #184 and #214 because it is the individual's name combined with information that is personal in nature. Accordingly, it should continue to be withheld pursuant to section 29(1) of FOIP.

[139] With regards to redaction #96, as mentioned earlier in this Review Report, it was my intention to address this redaction in this section of my Review Report despite SGI's having listed the redaction under sections 22(a) and 29(1) of FOIP.

[140] SGI's submission dealing with the application of 22(a) of FOIP, received March 27, 2012, regarding redaction #96 states as follows:

Document 96

SGI is prepared to release this document, but is redacting the personal information concerning the Bodily Injury Adjuster.

[141] However, this information appears to qualify as personal health information under section 2(m)(i) of HIPA as it is the personal health information of the individual who was ill. The information is about the physical health of an SGI employee's family member that appears in an email. It is unrelated to the Applicant's claim file.

[142] Paramountcy of Part VIII of AAIA would not be involved for this information on redaction #96 as this information pertains to an SGI employee's family member and was not obtained for the purposes of adjudicating a claim pursuant to Part VIII of AAIA.

[143] Therefore, I recommend that this information continue to be withheld by SGI. However, it should correctly be withheld under section 27(1) of HIPA and not section 29(1) of FOIP. Section 27(1) of HIPA provides as follows:

27(1) A trustee shall not disclose personal health information in the custody or control of the trustee except with the consent of the subject individual or in accordance with this section, section 28 or section 29.

[144] This recommendation was made to SGI in my office's preliminary analysis. It is unclear if SGI complied with this recommendation or not.

V FINDINGS

[145] I find that Saskatchewan Government Insurance did not meet the burden of proof in accordance with section 61 of *The Freedom of Information and Protection of Privacy Act* on the following records because it did not properly identify the exemption relied on to withhold the records from the Applicant: redactions #18, #100, #105, #166, page 2 of #40, #97, #141, #153, #166, #193 and #198.

[146] I find that Saskatchewan Government Insurance properly applied section 17(1)(b)(i) of *The Freedom of Information and Protection of Privacy Act* to some of the records and did not properly apply the section to others.

[147] I find that Saskatchewan Government Insurance did not meet the burden of proof in demonstrating that section 18(1)(f) of *The Freedom of Information and Protection of Privacy Act* applied to the records in question.

[148] I find that Saskatchewan Government Insurance properly applied section 22(a) of *The Freedom of Information and Protection of Privacy Act* to most of the information in the records in question. However, some of the information did not qualify under this section, such as email headers and signature lines.

[149] I find that Saskatchewan Government Insurance properly applied section 29(1) of *The Freedom of Information and Protection of Privacy Act* to some of the records in question but did not properly apply the section to others.

[150] I find that Saskatchewan Government Insurance did not properly identify personal health information or properly apply *The Health Information Protection Act* to the record numbered redaction #96.

[151] The following recommendations in this Review Report reflect the current status of this case following my office's preliminary analysis and Saskatchewan Government Insurance's response to the recommendations made in that analysis.

VI RECOMMENDATIONS

[152] I recommend that Saskatchewan Government Insurance continue its efforts to improve both its techniques for searching for responsive records and preparing an intelligible record and response for purposes of a review.

[153] I recommend that Saskatchewan Government Insurance release those records found not to qualify for exemption due to the failure to meet the burden of proof in accordance with section 61 of *The Freedom of Information and Protection of Privacy Act*. This includes the following redactions: #18, #97, #100, #105, #141, #153, #166, #193 and #198.

[154] I recommend that Saskatchewan Government Insurance withhold those records and portions of records found to qualify for exemption under section 17(1)(b)(i) of *The Freedom of Information and Protection of Privacy Act*. This includes the following redactions: #8, #9, #10, #31, #33, #34, #35, #38, #43, #44, #90, #124, #128, #143, #147, #152, #158, #159, #167, #168, #169, #170, #171, #172, #173, #174, #181, #184, #185, #186, #189, #190, #209, #210, #212, #214 and #219. However, I also recommend that Saskatchewan Government Insurance appropriately exercise its discretion and consider releasing the records.

[155] I further recommend that Saskatchewan Government Insurance release those records found not to qualify for exemption under section 17(1)(b)(i) of *The Freedom of Information and Protection of Privacy Act*. This includes the following redactions: #39, #41, #42, #45, #126, #129, #130, #144, #145, #146 and #215.

[156] I recommend that Saskatchewan Government Insurance release those remaining records found not to qualify for exemption under section 18(1)(f) of *The Freedom of Information and Protection of Privacy Act*. This includes the following redactions: #12, #175 and #176.

[157] I recommend that Saskatchewan Government Insurance continue to withhold those records found to qualify for exemption under section 22(a) of *The Freedom of Information and Protection of Privacy Act*. This includes the following redactions: #16, #25, #25A, #40, #46, #47, #49, #54, #57, #67, #69, #72, #74, #76, #79, #80, #82, #84, #86, #91, #92, #99, #104, #108, #110, #111, #112, #113, #115, #116, #118, #139, #154, #155, #165, #191, #200, #201, #202 and #203. However, Saskatchewan Government Insurance should release the email headers and any signature lines. In addition, Saskatchewan Government Insurance should appropriately exercise its discretion and consider releasing the records.

[158] I recommend that Saskatchewan Government Insurance withhold those records found to qualify for exemption under section 29(1) of *The Freedom of Information and Protection of Privacy Act*. This includes the following redactions: #20, #21, #22, #27, #77, #78,

#85, #101, #114, #117, #119, #123, #125, #133, #134, #135, #150, #160, #162, #163, #164, #178, #180, #182 #195, #196, #197 and #205.

[159] I recommend that Saskatchewan Government Insurance release those portions of the record found not to qualify for exemption under section 29(1) of *The Freedom of Information and Protection of Privacy Act*. This includes the following redactions: #23, #109, #182 and #199.

[160] I recommend that Saskatchewan Government Insurance withhold the information on redaction #96 as it is the personal health information of an individual who is not the Applicant pursuant to *The Health Information Protection Act*.

Dated at Regina, in the Province of Saskatchewan, this 31st day of December, 2013.

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