

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT F-2014-004

Saskatchewan Government Insurance

Summary:

In March 2013, an Applicant submitted a request to Saskatchewan Government Insurance (SGI) to have his personal information changed and/or removed from his claim file. SGI denied the Applicant's request and instead made a notation on the file pursuant to subsection 32(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Applicant requested a review by the Office of the Saskatchewan Information and Privacy Commissioner (OIPC). The Commissioner found that some of the information was opinion material and as such would not qualify under subsection 32(1)(a) of FOIP to be changed or removed. Further, the Commissioner found that the remainder of the information appeared to accurately reflect the views and/or impressions of the author at the time the record was created and therefore did not qualify to be changed or removed pursuant to subsection 32(1)(a) of FOIP. Finally, the Commissioner found that SGI acted reasonably in refusing to grant the request and instead placed the notation on file. Given that SGI already indicated it made the notation in question, the Commissioner made no recommendations arising out of this review.

I BACKGROUND

- [1] On March 7, 2013, the Applicant requested that his personal information held by Saskatchewan Government Insurance (SGI) be changed and/or removed.
- [2] SGI responded to the Applicant by letter dated April 3, 2013 advising that it would not make the changes requested but would place a notation on file.
- [3] My office received a Request for Review from the Applicant on April 15, 2013.

[4] My office issued notification letters to both the Applicant and SGI on May 6, 2013, indicating our intention to commence a review. My office requested that SGI provide a submission addressing first how the information qualifies as the Applicant's personal information followed by reasons why SGI rejected the Applicant's correction requests. My office also requested that SGI provide a copy of the material in question.

II RECORDS AT ISSUE

[5] The focus of the Applicant's request to have information corrected and/or removed by SGI appears to focus on an internal SGI email dated July 25, 2012. The email was from an SGI investigator in the Special Investigations Unit to another SGI employee who had been seeking more information about the nature of previous SGI investigation files involving the Applicant.

III DISCUSSION OF THE ISSUES

[6] SGI is a "government institution" for purposes of *The Freedom of Information and Protection of Privacy Act* (FOIP).

1. Did Saskatchewan Government Insurance meet its obligations under section 32 of FOIP?

[7] Section 32 of FOIP provides:

32(1) An individual who is given access to a record that contains personal information with respect to himself or herself is entitled:

(a) to request correction of the personal information contained in the record if the person believes that there is an error or omission in it; or

(b) to require that a notation be made that a correction was requested but not made.

(2) Within 30 days after a request pursuant to clause (1)(a) is received, the head shall advise the individual in writing that:

(a) the correction has been made; or

(b) a notation pursuant to clause (1)(b) has been made.

(3) Section 12 applies, with any necessary modification, to the extension of the period set out in subsection (2).

[8] Subsection 32(1)(a) of FOIP provides an individual with the right to request a government institution correct his/her personal information where the individual believed there has been an error or omission. Subsection 32(1)(b) of FOIP requires the government institution to make a notation on file if the correction was requested but not made.

[9] My office has not previously considered section 32 of FOIP. Therefore, I will consider how my counterparts in other jurisdictions approach similar sections in their legislation.

[10] In Ontario Information and Privacy Commissioner (Ontario IPC) Order MO-2766 at [89], the following criteria were established when considering the right of correction under subsection 47(2) of Ontario's *Freedom of Information and Protection of Privacy Act*:

...

1. the information at issue must be personal and private information;
2. the information must be inexact, incomplete or ambiguous; and
3. the correction cannot be a substitution of opinion.

[11] I take a similar approach to Saskatchewan's subsection 32(1) of FOIP.

1. Is the information at issue personal information?

[12] Subsection 24(1) 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:

...

(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;

...

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

...

(k) the name of the individual where:

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

[13] Information must be of a personal nature in order to qualify as personal information (Review Report F-2010-001 at [126]). Based on the Applicant's request for correction sent to SGI, it appears that the information in question would qualify as the personal information of the Applicant.

[14] For example, the Applicant raises issue with the classification of himself in an SGI internal email as a "high moral risk" who has "flew under the radar". Subsection 24(1)(h) of FOIP defines personal information as including the "views or opinions of another individual with respect to the individual". Therefore, this type of opinion would constitute the personal information of the Applicant.

[15] In another example, the Applicant raises issue with the statements made by SGI about items on his property that are documented by SGI as stolen property. Subsection 24(1)(b) of FOIP defines personal information as including "information that relates to the ... criminal ... history of the individual or information relating to financial transactions in which the individual has been involved". Therefore, this type of information would constitute the personal information of the Applicant.

[16] In addition, both of the above examples would also qualify as personal information under subsection 24(1)(k)(i) of FOIP as it involves the name of the Applicant combined with other information of a personal nature that relates to the Applicant.

[17] The Applicant also raises issue with SGI stating that his house was “still being worked on”. This type of information would qualify as personal information also under subsection 24(1)(k)(i) of FOIP for similar reasons as noted above. Further, the Applicant claims SGI stated he was “heavily involved in the construction industry”. This type of information would qualify as personal information (employment history) pursuant to subsection 24(1)(b) of FOIP.

[18] As the information in question appears to qualify as the personal information of the Applicant pursuant to subsection 24(1) of FOIP, the first part of the test has been met.

2. Is the information inexact, incomplete or ambiguous?

[19] Subsection 32(1) of FOIP uses the terms “error” and “omission”. FOIP does not define these terms.

[20] An error is “a mistake or something wrong or incorrect”; an omission means that “something is missing, left out or overlooked” (Alberta IPC Order F2003-019 at [para 34]).

[21] The Applicant must establish that there are errors or omissions in the personal information that are subject to correction. The burden of proof is placed on applicants in matters of correction (Service Alberta, *FOIP Guidelines and Practices*, 2009 Edition, p. 254).

[22] Ontario IPC appears to have dealt extensively with the request for correction as represented by the high number of Orders issued. However, other jurisdictions were also considered in this review and it was found that these jurisdictions also take a similar approach as Ontario’s.

[23] A review of a number of Ontario IPC Orders reveals a consistent approach to decisions regarding requests for correction. In Ontario IPC Order MO-2766 at [91], it was found that:

... records of an investigatory nature cannot be said to be “incorrect”, “in error” or “incomplete” if they simply reflect the views of the individuals whose impressions are being set out. In other words, it is not the truth of the recorded information that is determinative of whether a correction request should be granted, but rather whether or not what is recorded accurately reflects the author’s observations and impressions at the time the record was created.

[24] The Applicant’s submissions to our office focused arguments and evidence on trying to prove the information in the SGI email was not “true”.

[25] As noted above, records of this kind (investigative records) cannot be said to be “incorrect”, “in error” or “incomplete” if they simply reflect the views of the individuals whose impressions are being set out, whether or not these views are true. Therefore, the truth of these views is not an issue in this review.

[26] The same considerations apply to whether the records can be said to be “inexact” or “ambiguous”. There has been no suggestion that the records do not reflect the views of the investigator. Therefore, the question is, do the statements reflect the views or impressions of the investigator as they existed at the time the record was created?

[27] The record is an email created by the SGI investigator. Information in the email appears to constitute the views and impressions of the SGI investigator based on information he received from a police force who conducted a criminal investigation.

[28] Therefore, I find that the personal information in dispute appears to accurately reflect the views and impressions of the SGI investigator at the time the record was created.

[29] Since all three requirements of the test for correction must be satisfied, it is not necessary for me to consider the third requirement. However, for the sake of completeness, I will address the third part of the test briefly.

3. Is the correction a substitution of opinion?

- [30] The first issue raised by the Applicant appears to be a request for the correction and/or removal of the SGI investigator's opinion. That being, the statement that the Applicant is a "high moral risk" and he "flew under the radar for years".
- [31] In order to qualify, the request cannot be a substitution of opinion. Therefore, SGI appropriately declined the Applicant's request to remove and/or change the information.
- [32] It should be noted that removal is not one of the options contemplated by subsection 32(2) of FOIP. I find that the correction contemplated under Saskatchewan's subsection 32(2) of FOIP involves changing the information or adding new information, but not removal.
- [33] In conclusion, as all three requirements for the granting of a correction request have not been met, I am satisfied that SGI acted reasonably in refusing to grant the request and make corrections to the record pursuant to subsection 32(1)(a) of FOIP.
- [34] SGI has agreed to place the Applicant's objection of the disputed information on SGI's files pursuant to subsection 32(1)(b) of FOIP.

IV FINDINGS

- [35] I find that the information in question does not qualify for correction under subsection 32(1)(a) of FOIP.

V RECOMMENDATIONS

- [36] Given that Saskatchewan Government Insurance already indicated it made the notation in question, I make no recommendations arising out of this review.

Dated at Regina, in the Province of Saskatchewan, this 1st day of August, 2014.

RONALD J. KRUZENISKI, Q.C.
Saskatchewan Information and Privacy
Commissioner