

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT F-2014-008

Saskatchewan Government Insurance

I BACKGROUND

[1] On January 31, 2014, Saskatchewan Government Insurance (SGI) received an access to information request for the following:

1st Third Party [name removed] possibly a draft

Default for Defence 04 Nov 1985

06 Jan 2014 info not disclosed No. 7 & No. 10 First Schedule

06 Jan 2014 unable to locate in First Schedule No.'s 24, 27, 28, 29, 37, 38, 44, 45, 46

[2] In a letter dated February 26, 2014, SGI responded to the Applicant advising that it did not have records responsive to portions of the access request. For the remaining portions of the access request, SGI advised it was withholding the portions pursuant to subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

[3] On March 6, 2014, my office received a request for review from the Applicant. The Applicant advised my office during the course of the review that she was only interested in a review of the portion of SGI's response that indicated records did not exist. Therefore, this review only focused on the issue of records not existing in the possession or control of SGI.

[4] In a letter dated March 24, 2014, my office notified SGI and the Applicant of its intention to undertake a review. In our notification letter to SGI, my office requested a submission containing details regarding how SGI arrived at the conclusion that records did not exist.

[5] My office received a submission from SGI on June 6, 2014. On June 19, 2014, my office received a submission from the Applicant.

II RECORDS AT ISSUE

[6] The records sought by the Applicant which SGI had indicated did not exist were the following:

- 1st Third Party [name removed] possibly a draft
- Default for Defence 04 Nov 1985
- 06 Jan 2014 unable to locate in First Schedule No.'s 24, 27, 28, 29, 37, 38, 44, 45, 46

[7] SGI asserts that it has searched for these records and the records could not be found or have been destroyed. Therefore, the focus of this review is on the search efforts conducted by SGI.

III DISCUSSION OF THE ISSUES

[8] SGI is a “government institution” as defined in subsection 2(1)(d)(ii) of FOIP.

1. Did SGI conduct an adequate search?

[9] Section 5 of FOIP provides the right of access as follows:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a government institution.

[10] Section 5 is clear that access can be granted provided the records are in the possession or under the control of the government institution. FOIP does not require a government institution to prove with absolute certainty that records do not exist. It must however, demonstrate that it has made a reasonable effort to identify and locate responsive records.

[11] A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request. The threshold that must be met is one of “reasonableness”. In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable (Review Report F-2012-002 at [26] to [29]).

[12] To ensure a complete and adequate search, government institutions should utilize and document a search strategy which could include consideration of the following:

- Were records in any form or format considered (i.e. electronic, paper, and other)?
- Is the original access request broad and does it include information developed over a wide open time period? If so, determine how you will define the search?
- How do you intend to conduct the search for records in the public body’s possession?
 - Do you search yourself?
 - Do you delegate others to do the search? If so, how can you be sure that the search was comprehensive?
 - Do you send out an email to other units, etc.?
- Could records also exist that are responsive but are not in your possession, but in your control?
- Did agents, consultants or other contracted services have any role in the project the access request is referencing? If yes, should these records be included?

(Review Report F-2012-002 at [28])

[13] When providing details of search efforts to my office, generally, the details should include:

- Who conducted the search?

- On what dates did each employee search?
- What was the search strategy?
 - for paper files; and
 - for electronic files (i.e. what key terms were used to search?)
- Which files or departments were searched and why?
- How long did the search take for each employee?
- What were the results of each employees search?
- Are there any additional program areas that should be searched in order to ensure that every reasonable effort was made?
- Have staff searched files held apart from the main department files (such as those held by individual employees), or records stored off-site?

(Review Report F-2012-001/LA-2012-001 at [78])

[14] In its response to the Applicant, SGI broke down the search it conducted and provided some explanations as to why it believed certain records did not exist. Attached to SGI's submission were letters and confirmations of destruction for records received from the Saskatchewan Archives Board showing that more than 1200 boxes of records (auto and injury files) from 1999 and prior were destroyed in 2002 and 1996. SGI also asserted that the records requested would have been in an auto and injury file and that no other office or department within SGI would have had responsibility or access to these files so the records requested by the Applicant were likely contained in these destroyed boxes.

[15] SGI asserted that one file remained (a legal file related to a rural municipality) that may have contained responsive records. SGI previously searched this file multiple times due to multiple access to information requests made by the Applicant for the same records. The file was searched two more times for this access to information request. SGI also searched the electronic version of this file. In addition, the staff that searched had the necessary knowledge to conduct the searches.

[16] In the Applicant's submission, the Applicant provided my office with a significant number of reproduced letters and legal documents pertaining to legal proceedings in

1985. However, the Applicant did not connect the letters and legal documents to any argument about why the records should still exist. The Applicant also provided a copy of a letter from SGI from 2011 which related to a previous access to information request made. The letter indicates that SGI, in an attempt to satisfy the Applicant, got a copy of a court file at the Court of Queen's Bench and provided it to the Applicant free of charge. The record the Applicant was requesting at that time was the same as one of the records in this matter. The only difference is that the Applicant is now asking for draft version of the record. SGI is not required to reproduce records from a court file at the Court of Queen's Bench as only records in its possession or control are required. This action by SGI suggests that it went to great lengths to attempt to satisfy the Applicant previously for versions of the same document.

[17] Finally, also included with the Applicant's submission was a sworn affidavit from the Applicant. The Applicant asserted that the records existed in late 1985 or early 1986. However, the role of my office in this review is focused on whether SGI conducted a reasonable search for the records requested. It is not on proving whether the record currently exists with absolute certainty or that it existed at some point in the past. The records may have existed at one time but that does not mean they currently exist within the possession or control of SGI.

[18] SGI has detailed its search efforts. In addition, SGI has provided documentation showing that more than 1200 boxes of files were destroyed previously and the records were likely contained in these boxes.

[19] The threshold that must be met is one of "reasonableness". Based on what has been provided to my office, I find that SGI has demonstrated that its search for records responsive to the Applicant's access request was reasonable and adequate for purposes of FOIP.

IV FINDINGS

[20] I find that SGI has demonstrated that its search for records responsive to the Applicant's access request was reasonable and adequate for purposes of FOIP and that no responsive records appear to exist.

V RECOMMENDATIONS

[21] There are no recommendations to be made at this time as I am satisfied with the efforts made by Saskatchewan Government Insurance in this circumstance.

Dated at Regina, in the Province of Saskatchewan, this 27th day of August, 2014.

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