



REVIEW REPORT 075-2022

Saskatchewan Government Insurance

July 22, 2022

Summary: The Applicant made an access to information request to the Saskatchewan Government Insurance (SGI) under *The Freedom of Information and Protection of Privacy Act* (FOIP). SGI extended the timeline for its response by an additional 30 days pursuant to section 12(1)(a)(ii) of FOIP. Subsequently, SGI issued a response pursuant to section 7 of FOIP denying access to portions of the record pursuant to section 15(1)(k) of FOIP. It also withheld some information as non-responsive. The Commissioner found that the time extension did not comply with section 12(1) of FOIP, that section 15(1)(k) of FOIP did not apply and that some of the information was not responsive to the request. The Commissioner recommended that SGI release the information it claimed was exempt and consider releasing the non-responsive information subject to any exemptions found to apply.

I BACKGROUND

[1] On February 15, 2022, the Saskatchewan Government Insurance (SGI) received an access to information request under *The Freedom of Information and Protection of Privacy Act* (FOIP) from the Applicant for the following:

Any Memorandums of Understanding between Saskatchewan Government Insurance and the Saskatoon Police Service regarding access to confidential information maintained in the SGI Auto Fund Registry.

[2] SGI responded to the access to information request on March 10, 2022, advising that the 30-day timeline for responding to the request was extended by 30 days pursuant to section 12(1)(a)(ii) of FOIP.

- [3] On April 14, 2022, SGI provided a response to the access to information request pursuant to section 7 of FOIP. It withheld access to some of the information in the record on the basis that section 15(1)(k) of FOIP applied and other information on the basis that it was not responsive to the request.
- [4] On April 22, 2022, the Applicant asked my office to review SGI's decision to extend the time for its response and to withhold information.
- [5] On May 4, 2022, my office notified the Applicant and SGI of my office's intention to conduct a review. The notification invited both parties to provide a submission on the extension of time for a response, application of section 15(1)(k) of FOIP and whether information was properly withheld as non-responsive.
- [6] On June 3, 2022, my office received an index of records and copies of the record at issue from SGI.
- [7] On June 21, 2022, my office received a submission from the Applicant.
- [8] On July 4, 2022, my office received a submission from SGI.

II RECORD AT ISSUE

- [9] The record at issue is a 22-page Information Sharing Protocol (Protocol) between SGI and the Saskatoon Police Service (SPS).

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [10] SGI qualifies as a "government institution" pursuant to section 2(1)(d)(ii) of FOIP and section 3 and Part I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations*. Therefore, I have jurisdiction to review this matter.

2. Did SGI's time extension comply with section 12 of FOIP?

[11] Section 7(2) of FOIP provides that a government institution must respond to an access to information request within 30 days of receiving it unless the deadline for the response was extended pursuant to section 12 of FOIP. Section 7(2) of FOIP states, in part:

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

[12] Section 12 of FOIP sets out the circumstances where a government institution can extend the initial 30-day deadline for a maximum of 30 days. If the deadline is extended for the maximum amount, the government institution has 60 days in total to respond.

[13] SGI's notice of the extension stated it was relying on section 12(1)(a)(ii) of FOIP to support its claim to an extension. I note that SGI raised section 12(1)(b) of FOIP in its submission as additional support for its extension claim. As it did not raise section 12(1)(b) of FOIP in its letter of extension to the Applicant, I will not be considering that section here.

[14] Sections 12(1)(a)(ii), (2) and (3) of FOIP provide:

12(1) The head of a government institution may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:

(a) where:

...

(ii) there is a large number of requests; and completing the work within the original period would unreasonably interfere with the operations of the government institution.

(2) A head who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within 30 days after the application is made.

(3) Within the period of extension, the head shall give written notice to the applicant in accordance with section 7.

[15] Section 12(2) of FOIP states that a notice of extension must be provided to an applicant within the first 30 days after the government institution receives an access to information

request. SGI received the access to information request on February 15, 2022 and provided its notice of extension to the Applicant on March 10, 2022, which was 23 days later. Therefore, SGI complied with section 12(2) of FOIP. I note that as a best practice a government institution should take steps to notify an applicant of an extension as soon as it is able, rather than waiting until the last few days of the initial deadline to provide the notice.

[16] Section 12(3) of FOIP requires a government institution to respond within the period of the extension. SGI extended the timeline for responding by 30 days which meant that its response was due on April 16, 2022. SGI responded to the access to information request on April 14, 2022, which was two days before the expiry of the extended date. Therefore, SGI complied with section 12(3) of FOIP.

[17] I now turn to consider whether the extension complied with section 12(1)(a)(ii) of FOIP. For section 12(1)(a)(ii) of FOIP to apply, the government institution must establish that both parts of the following test have been met:

1. Were there a high number of requests at the time?
2. Will meeting the original time limit unreasonably interfere with the operations of the government institution?

(IPC *Guide to FOIP*, Chapter 3, “Access to Records”, updated June 29, 2021 [*Guide to FOIP*, Ch. 3], pp. 75-77)

1. Were there a high number of requests at the time?

[18] FOIP does not define “large number of requests.” The factors to be considered in determining whether there was a large number of requests include the number of requests received and how that compares to the number received in previous years (*Guide to FOIP*, Ch. 3, p. 76). Previous reports of my office have found that increases in the number of requests of 50% or more qualify as a large number of requests (see my office’s [Report 177-2021](#), [Report 158-2017](#), and [Report 125-2015](#)).

[19] In its submission, SGI asserted it complied with section 12 of FOIP. It also asserted the extension was necessary due to “extra discussions and consultations” and because it had a new employee who was undergoing training at the time.

[20] SGI did not provide my office with any information about the number of requests that it had received at the time that the Applicant filed their request and how that compared to the number of requests received in previous years. I find that SGI has not met the first part of the test for the application of section 12(1)(a)(ii) of FOIP. In these circumstances, there is no need for me to consider whether SGI has met the second part of the test. I find that SGI’s time extension did not comply with section 12 of FOIP.

3. Did SGI properly apply section 15(1)(k) of FOIP?

[21] SGI applied section 15(1)(k) of FOIP to withhold information on pages 6 and 14 of the Protocol. Section 15(1)(k) of FOIP provides:

15(1) A head may refuse to give access to a record, the release of which could:

...
(k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

[22] Section 15(1)(k) of FOIP permits refusal of access in situations where release of a record could interfere with a law enforcement matter or disclose information respecting a law enforcement matter. My office applies the following two-part test when considering the application of this exemption:

1. Is there a law enforcement matter involved?
2. Does one of the following exist?
 - (a) Could the release of information interfere with a law enforcement matter?
 - (b) Could the release of information disclose information with respect to a law enforcement matter?

(IPC *Guide to FOIP*, Chapter 4, “Exemptions from the Right of Access”, updated April 30, 2021 [*Guide to FOIP*, Ch. 4] at pp. 75-78)

1. Is there a law enforcement matter involved?

[23] “Law enforcement” includes policing, which refers to the activities of police services, and includes criminal intelligence operations. This means activities carried out under the authority of a statute regarding the maintenance of public order, detection and prevention of crime or the enforcement of law. Law enforcement can also include investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment (*Guide to FOIP*, Ch. 4, at pp. 74 to 75).

[24] “Matter” should be given its plain and ordinary meaning. It does not necessarily have to apply to some specific on-going investigation or proceeding. For example, law enforcement matter has been found to include opinions about potential criminal code charges ([Review Report 157-2019](#)); internal police records regarding police involvement in a labour dispute ([Review Report 115-2020, 116-2020, 117-2020](#)); and Call Reports, General Occurrence Reports and 911 audio records generated in the course of police activities under *The Police Act, 1990* ([Review Report 023-2019, 098-2019](#)).

[25] Section 36(2) of *The Police Act, 1990* provides members of the police service with the following powers and responsibilities:

36(2) Unless otherwise indicated in his or her appointment, a member has the power and the responsibility to:

(a) perform all duties that are assigned to constables or peace officers in relation to:

(i) the preservation of peace;

(ii) the prevention of crime and offences against the laws in force in the municipality; and

(iii) the apprehension of criminals, offenders and others who may lawfully be taken into custody;

[26] SGI asserted:

A law enforcement matter is involved as SGI allows for the use of its photo identification information to allow for the prevention, detection and investigation of criminal offences. The Memorandum of Understanding authorizes the SPS to access SGI's database in order to assist with policing matters such as maintaining public order, traffic law enforcement and/or identification of individuals under investigation.

The IPC Guide to FOIP (pages 75 & 76) state that the definition of law enforcement includes policing and subsection 36(2) of *The Police Act, 1990* provides the SPS with relevant powers and responsibilities for policing the above-mentioned offences. Therefore, the policing activities carried out with the assistance of SGI's information is a law enforcement matter.

[27] The Applicant sought access to the Protocol, which is an agreement between SPS and SGI setting out the terms and conditions under which SGI gives SPS access to the SGI Auto Fund Registry. It governs and enables SPS to access and use information from SGI's database for purposes defined in the Protocol. The question, then, is whether the information withheld from the Protocol involves a *law enforcement matter*.

[28] The information withheld from page 6 includes restrictions on the use of information contained in SGI's database by SPS and defines certain exceptions. The information withheld from page 14, identifies one category of individuals who have authority under the Protocol to access information. I note information about other categories of individuals who have access rights to SGI's database has not been withheld.

[29] SGI's claim that the withheld information involves a law enforcement matter rests on the argument that SPS *uses* the data in SGI's Auto Fund Registry for law enforcement purposes. It states that the policing activities are carried out "with the assistance of SGI's information."

[30] I have not been provided with any information or argument to support a finding that the terms under which SPS accesses SGI's Auto Fund Registry, which is created and maintained by SGI, qualify as a law enforcement matter. SGI has not established a sufficient connection between the Protocol and the SPS' policing, criminal intelligence, or investigative activities even when the term "matter" is given its broadest interpretation.

Therefore, I find that the information withheld from the Protocol at pages 6 and 14 does not qualify as a law enforcement matter pursuant to section 15(1)(k) of FOIP.

[31] As SGI has not met the first part of the test, I have no need to go further. I find SGI has not properly applied section 15(1)(k) of FOIP to the withheld information and recommend it release the portions of records where it applied this exemption.

4. Is there information in the records that is not responsive to the access to information request?

[32] SGI claimed that portions of pages 3 to 5, 11, and 12 of the Protocol were not responsive to the request and withheld that information. When a government institution receives an access to information request, it must determine what information is responsive to the request.

[33] “Responsive” means relevant. The term describes anything that is reasonably related to the request. It follows that any information or records that do not reasonably relate to an Applicant’s request will be considered “not-responsive.” The Applicant’s access to information request itself sets out the boundaries of relevancy and circumscribes the records or information that will ultimately be identified as being responsive.

[34] A public body can sever information as non-responsive only if the Applicant has requested specific information, such as their personal information. The public body may treat portions of a record as non-responsive if they are clearly separate and distinct and not reasonably related to the access request.

[35] The purpose of FOIP is best served when a government institution adopts a liberal interpretation of a request. If a government institution has any doubts about its interpretation, it has a duty to assist an applicant by clarifying or reformulating the request (*Guide to FOIP*, Ch. 3, p. 13).

[36] The Applicant's request was clear in that they sought access to any memoranda of understanding "regarding access to confidential information maintained in SGI's Auto Fund Registry." The portions of the Protocol that SGI has identified as responsive relate to SPS' access to information maintained in SGI's Auto Fund Registry. The portions that have been found to be non-responsive deal with other arrangements for information sharing between SGI and SPS unrelated to SGI's Auto Fund Registry. In the "Purpose of Protocol" section of the record, it states that one of the purposes of the Protocol is to "replace all existing agreements with a single document governing the exchange of information." SGI asserted:

The Memorandum of Understanding has two distinctive aspects: (SPS') access to the Auto Fund Registry and SGI's [...] access to [...]. The Applicant's request was clear in that it was only requesting information regarding the SPS' access to the Auto Fund registry; therefore, the separate aspect of the agreement was deemed non-responsive.

[37] I find, therefore, there are portions of the Protocol that are not responsive to the Applicant's access to information request. However, consistent with my blog, "What About the Non-Responsive Records?" and previous reports of my office (see for example [Review Report 173-2020](#), [190-2020](#), [157-2021](#)), I recommend that SGI consider releasing the non-responsive portions of the Protocol, subject to any exemptions that are found to apply.

IV FINDINGS

[38] I find that I have jurisdiction to conduct this review.

[39] I find that SGI's time extension did not comply with section 12 of FOIP.

[40] I find that SGI did not properly apply section 15(1)(k) of FOIP.

[41] I find that portions of the Protocol are not responsive to the Applicant's request.

V RECOMMENDATIONS

[42] I recommend that SGI review and amend its policies or procedures for access to information requests to provide guidance on the circumstances where it has authority to extend the legislated timeline pursuant to section 12 of FOIP.

[43] I recommend that SGI release the information withheld pursuant to section 15(1)(k) of FOIP.

[44] I recommend that SGI consider releasing the portions of the Protocol that I have found to be non-responsive, subject to any exemptions found to apply.

Dated at Regina, in the Province of Saskatchewan, this 22nd day of July, 2022.

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