



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 189-2023**

### **Saskatchewan Government Insurance**

**January 17, 2024**

#### **Summary:**

Saskatchewan Government Insurance (SGI) received an access to information request from the Applicant. SGI initially withheld parts of the records pursuant to subsections 17(1)(a) and 17(1)(b)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Later, SGI released the records in full to the Applicant. The Applicant requested a review of SGI's search efforts by the Commissioner. SGI indicated in its submission to my office that it applied FOIP erroneously to the records. SGI indicated my office does not have jurisdiction over the review, but rather the access request is subject to subsection 165(2) of *The Automobile Accident Insurance Act* (AAIA). The Commissioner found that the information involved in this case was obtained by SGI for the purpose of Part VIII of AAIA. The Commissioner also found that *The Health Information Protection Act* (HIPA) and FOIP do not apply in this case. Regarding the access request, the Commissioner recommended that SGI take no further action. The Commissioner also recommended that SGI request the Minister of Justice and Attorney General amend subsection 24(1.2) of FOIP to also include personal health information in the possession or control of SGI.

#### **I BACKGROUND**

- [1] On January 11, 2023, Saskatchewan Government Insurance (SGI) received an access to information request from the Applicant as follows:

I am requesting access to all records created by [SGI injury claims adjuster] from 2013 to Present date, including but not limited to, all authorizations to collection [sic] information, medical consultant requests, reports and letters (all documents provided to medical consultants), any decision letters, service documents of those letters or decisions, address profiles of mine on SGI's system, internal notes, all drafted letters, file updates, communications with SGI's legal department, emails (to and from me)

and anything else which occurred during this time period. I am requesting all of Dr. Khaliq-Kareemi's reports.

From 2012 to present date, January 11<sup>th</sup>, 2023.

- [2] On January 31, 2023, SGI sent a letter to the Applicant asking them to clarify their access to information request. Between February 3 and February 6, 2023, SGI and the Applicant discussed the scope of the access to information request and the Applicant asked for all records but for the start date of the requested records to be changed from 2013 to 2015.
  
- [3] On February 10, 2023, SGI sent a letter to the Applicant indicating it would be extending the due date of its response by an additional 30 days to March 12, 2023, pursuant to subsection 12(1)(a)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
  
- [4] On March 15, 2023, SGI sent its section 7 decision letter to the Applicant. In its decision, SGI advised the Applicant that it was releasing some information and withholding portions of records pursuant to subsections 17(1)(a) and (b)(i) of FOIP.
  
- [5] On August 14, 2023, my office received a request for review from the Applicant regarding SGI's decision. The Applicant confirmed with my office that the review should be on the reasonableness of SGI's search efforts as records were not provided that the Applicant believed should have been.
  
- [6] On August 29, 2023, my office sent notices to SGI and the Applicant advising of my office's intent to undertake a review of SGI's section 7 decision. My office requested that SGI provide a copy of the record and an index of records to my office by September 28, 2023, and its submission by October 30, 2023. The Applicant was also invited to provide a submission by October 30, 2023.
  
- [7] On September 7, 2023, the Applicant confirmed with my office they would like the scope of our review to include SGI's efforts to search for responsive records.

- [8] On September 13, 2023, my office sent revised notices to SGI and the Applicant advising of my office's intent to undertake a review of SGI's section 7 decision. My office requested that SGI provide a copy of the record, an index of records to my office by October 13, 2023, and its submission by November 13, 2023. The Applicant was also invited to provide a submission by November 30, 2023.
- [9] On October 11, 2023, SGI provided my office with a copy of the records and an index of records.
- [10] On November 9, 2023, SGI provided my office with its submission. The Applicant did not provide a submission.
- [11] On November 16, 2023, SGI sent a letter to the Applicant indicating it was removing the exemptions it applied to the record. SGI released the redacted records in full to the Applicant that it had initially withheld pursuant to subsections 17(1)(a) and 17(1)(b)(i) of FOIP. Therefore, the only matter remaining within the scope of this review is the search efforts of SGI.
- [12] On December 8, 2023, the Applicant confirmed that they would like my office to still review SGI's search efforts.

## **II RECORDS AT ISSUE**

- [13] As the records have now been released in full, this review will only consider SGI's search efforts.

## **III DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction?**

[14] SGI is a “government institution” as defined in subsection 2(1)(d)(ii) of FOIP and subsection 3(a) and Part I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations).

[15] In its submission to my office, SGI indicated that it responded to the Applicant’s access request within the framework of FOIP in error. It asserted that the request should have been dealt with within the framework of Part VIII of *The Automobile Accident Insurance Act* (AAIA). Further, it asserted that *The Health Information Protection Act* (HIPA) did not apply in this case pursuant to subsection 4(4)(b) of HIPA. SGI stated:

The Applicant made the request pursuant to FOIP, so SGI erroneously responded to it...However, the OIPC does not have the jurisdiction to resolve the request for review.

SGI intends to re-response to the Applicant pursuant to section 165(2) of the AAIA.

...

The personal health information in the records the Applicant requested was collected pursuant to Part VIII of the AAIA by SGI. The collection of the information and its disclosure to a medical review physician was necessary to determine bodily injury benefits per the AAIA.

[16] SGI is also a “trustee” as defined in subsection 2(1)(t)(i) of HIPA. Further, the information in question constitutes personal health information as defined in subsection 2(1)(m) of HIPA and it is in SGI’s custody or control.

[17] However, subsection 4(4)(b) of HIPA exempts Parts II, IV and V of HIPA from applying to personal health information that has been collected, used, or disclosed where that information was obtained for the purpose of Part VIII (Bodily Injury Benefits) of the AAIA. Subsection 4(4)(b) of HIPA provides:

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*;

...

- [18] The AAIA is the primary enabling legislation for SGI. Part VIII of the AAIA sets out the process for SGI to deal with managing compensation claims arising from motor vehicle accidents.
- [19] The review request involves a Saskatchewan resident (Applicant) who was injured in motor vehicle accidents that occurred between the years 2000 and 2011. Due to the accidents, the Applicant made claims to SGI for injury benefits.
- [20] The information in this matter is clearly related to the injury claim. Therefore, I find that the information in this case was obtained by SGI for the purposes of Part VIII of the AAIA.
- [21] As such, I find that Part VIII of the AAIA applies in this case, and therefore, FOIP and HIPA do not apply.
- [22] In its submission to my office, SGI advised that in its response to the request for access it mistakenly cited FOIP. However, SGI indicated that upon further consideration of the records, it determined that AAIA was the appropriate legislation.
- [23] It should be noted that subsection 4(3) of HIPA provides that FOIP, unless where otherwise provided, does not apply to personal health information in the custody or control of a trustee. Subsection 4(6) of HIPA provides that FOIP applies to an enactment mentioned in subsection 4(4) of HIPA unless FOIP provides that the enactment or any provision in the enactment is not subject to FOIP or the FOIP Regulations. Part VIII of the AAIA is not listed as an enactment or part thereof that prevails over FOIP at subsection 23(3) of FOIP.
- [24] In my office's [Review Report 169-2020](#) (at paragraph [18]), I stated the following regarding a policy gap that requires a legislative amendment to correct as follows:

It should be noted that subsection 24(1.1) of FOIP provides that “personal information” does not include information that constitutes personal health information as defined in HIPA. The purpose of subsection 24(1.1) of FOIP is to ensure that two different laws do not apply to the same information at the same time. The practical effect of subsection 24(1.1) is that if personal health information is in the custody or control of a trustee and therefore subject to HIPA, it cannot simultaneously be personal information subject to

FOIP. The purpose of the Legislative Assembly in enacting subsection 24(1.1) was presumably to avoid duplication in legislative coverage, not to create a void where no privacy law applied to the information collected, used and disclosed by SGI in the course of its work under the AAIA. Although some parts of HIPA do apply to SGI in the course of its work under the AAIA, those parts are not at issue in this case. To deny the important rights of Saskatchewan residents prescribed by FOIP and HIPA would warrant clear and unambiguous language that evidenced that the Assembly had turned its mind to such as result. The obvious and appropriate place to do so would have been in the prevailing provisions in section 23 of FOIP or in section 12 of the FOIP Regulations (Review Report F-2012-005 at paragraph [31]). Clearly there is a gap here that requires a legislative amendment to correct, as in this case both the provisions regarding correction in HIPA and FOIP do not apply.

[25] Although the quote from paragraph [18] of my office's [Review Report 169-2020](#) stated in paragraph [30] of this Report refers to correction of personal health information and personal information under HIPA and FOIP respectively, the same argument can be applied to access to information requests (such as the one under review in this Report) under HIPA and FOIP also.

[26] Also, in my office's [Review Report 169-2020](#), at paragraph [19], I described how an amendment to FOIP ensured that personal information and personal health information collected by the Saskatchewan Workers' Compensation Board (WCB) fell under the jurisdiction of FOIP as follows:

A similar long standing issue existed with personal information and personal health information collected by the Saskatchewan Workers' Compensation Board (WCB) for purposes of sections 172 and 174 of *The Workers Compensation Act, 2013*. However, this issue was resolved by the Legislative Assembly when it amended FOIP and included a provision which clearly provides that personal health information in the possession or control of the WCB is personal information for the purposes of FOIP (subsection 24(1.2) of FOIP).

[27] In my office's [Review Report 169-2020](#) (at paragraphs [28] and [29]), [Investigation Report 087-2020](#) (at paragraph [33]), [Investigation Report 199-2020](#) (at paragraph [25]), and [Review Report 178-2023](#) (at paragraph [34]), I made recommendations regarding personal health information in SGI's possession or control as follows:

**[Review Report 169-2020:](#)**

[28] I recommend that SGI request the Minister of Justice to amend subsection 24(1.2) of FOIP to also include personal health information in the possession or control of SGI.

[29] I recommend the Minister of Justice to amend subsection 24(1.2) of FOIP to include personal health information in the possession or control of SGI.

**Investigation Report 087-2020:**

[33] I recommend that SGI request that the Minister of Justice amend section 24(1.2) of FOIP to also include personal health information in the possession or control of SGI.

**Investigation Report 199-2020:**

[25] I recommend that SGI request that the Minister of Justice amend section 24(1.2) of FOIP to also include personal health information in the possession or under the control of SGI.

**Review Report 178-2023:**

[34] I recommend that SGI request the Minister of Justice and Attorney General to amend subsection 24(1.2) of FOIP to include personal health information in the possession or control of SGI.

[28] In its response to my recommendation in my office's [Review Report 169-2020](#), the Ministry of Justice stated as follows:

Regarding your recommendation that SGI request the Minister of Justice to amend subsection 24(1.2) of *The Freedom of Information and Protection of Privacy Act* to include personal health information in the possession or control of SGI, the Ministry of Justice will take this recommendation into consideration at such time that the legislation is next amended.

[29] In its response to my recommendation in my office's [Review Report 169-2020](#), SGI stated as follows:

...SGI is always willing to collaborate with Justice on any amendments to FOIP they bring forward.

[30] In its response to my recommendation in my office's [Investigation Report 087-2020](#), SGI stated as follows:

...with respect to advocating for legislative amendments to the Ministry of Justice, your office is permitted to bring these matters to the Executive Branch of Government and has provided its rationale for this type of change in Investigation Report 087-2020. Therefore, SGI respectfully declines to follow this recommendation.

- [31] In its response to my recommendation in my office's [Investigation Report 199-2020](#), SGI advised as follows:

SGI is committed to its obligation to proactively undertake privacy-enhancing practices and remains willing to collaborate with the Ministry of Justice on any amendments to FOIP that they bring forward. However, with respect to advocating for legislative amendments to the Ministry of Justice, your office is permitted to bring these matters to the Executive Branch of Government and has provided its rationale for this type of change in Investigation Report 199-2020. Therefore, SGI respectfully declines to follow this recommendation.

- [32] The due date for SGI's response to my recommendation in my office's [Review Report 178-2023](#) is January 29, 2024.

- [33] Since SGI did not respond to my recommendation in my office's [Review Report 169-2020](#) and declined to follow recommendations in my office's [Investigation Report 087-2020](#) and [Investigation Report 199-2020](#), I reiterate my recommendation. I recommend that SGI request that the Minister of Justice and Attorney General amend section 24(1.2) of FOIP to also include personal health information in the possession or control of SGI.

- [34] Nonetheless, in regard to the access to information request, I recommend that SGI take no further action.

#### **IV FINDINGS**

- [35] I find that the information involved in this case was obtained by SGI for the purpose of Part VIII of the AAIA.

- [36] I find that Part VIII of the AAIA applies instead of provisions in Part V of HIPA, which includes the right of access at section 32.

- [37] I find that HIPA does not apply in this case.

- [38] I find that FOIP does not apply in this case.



## **V RECOMMENDATIONS**

[39] Regarding the access to information request, I recommend that SGI take no further action.

[40] I recommend that SGI request the Minister of Justice and Attorney General to amend subsection 24(1.2) of FOIP to include personal health information in the possession or control of SGI.

Dated at Regina, in the Province of Saskatchewan, this 17<sup>th</sup> day of January, 2024.

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