



## REVIEW REPORT 182-2024

### Saskatchewan Government Insurance

October 23, 2024

#### Summary:

An Applicant submitted an access to information request to Saskatchewan Government Insurance (SGI). SGI provided the Applicant access to some records but withheld others. SGI cited subsections 15(1)(c), (d), (e), 17(1)(a), (b)(i), 18(1)(f), and 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) as its reasons. The Applicant requested a review by the A/Commissioner. The A/Commissioner found that SGI properly applied subsection 15(1)(c), 17(1)(a), (b)(i), 18(1)(f), and 29(1) of FOIP in some circumstances but that it improperly applied subsection 15(1)(c), (e), 17(1)(a) and (b)(i) of FOIP in other circumstances. The A/Commissioner also found that SGI conducted a reasonable search for records. The A/Commissioner summarized his recommendations in the Appendix.

#### I BACKGROUND

[1] On January 23, 2024, Saskatchewan Government Insurance (SGI) received the Applicant's access to information request for the following:

case manger notes  
correspondences between practitioners [sic] and therapists.  
Email, phone calls, all updated + concurrent information – disclosure

[2] The Applicant specified the time period “2014-March until 2024-Jan”.

[3] On January 26, 2024, SGI contacted the Applicant to clarify the access request. On January 29, 2024, the access request was clarified as follows:

Documents - notes - telephone conversations and medical files. Re: claim #[claim number]. claim #[claim number]. If we could also know who is helping this claim. There are now teams at SGI - Can we please have the names of all the : representatives and team members attached to this file at current. - any and all the people involved in reviewing and making choices on these claims, including names and decisions and reasons for decisions.

- [4] In a letter dated February 26, 2024, SGI informed the Applicant it was extending the 30-day response period by an additional 30 days pursuant to subsection 12(1)(a)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [5] In a letter dated March 20, 2024 to the Applicant, SGI responded to the access request. SGI said it was:
- releasing the Applicant's personal health information in its entirety pursuant to section 165 of *The Automobile Accident Insurance Act*;
  - withholding 25 pages of responsive records in full pursuant to subsections 15(1)(c), (e), 17(1)(a), (b)(i) of FOIP;
  - disclosing five audio files in their entirety; and
  - releasing the remaining records with redactions pursuant to subsections 15(1)(c), (e), 17(1)(a), (b)(i), 18(1)(f), and 29(1) of FOIP.
- [6] SGI also said that it was withholding portions of the responsive records as those portions were non-responsive to the Applicant's access request.
- [7] On July 12, 2024, the Applicant requested a review by my office.
- [8] In an email dated July 26, 2024 to my office, SGI indicated that it realized it meant to (but did not) cite subsection 15(1)(d) of FOIP as a reason for refusing the Applicant access to records. Therefore, SGI sent a revised letter dated July 26, 2024, to the Applicant which cited subsection 15(1)(d) of FOIP in addition to the other exemptions it was relying on.
- [9] On August 9, 2024, my office notified both SGI and the Applicant that my office would be undertaking a review.

[10] On October 9, 2024, SGI provided my office with its submission.

[11] The Applicant did not provide my office with a submission.

## **II RECORDS AT ISSUE**

[12] SGI withheld 52 pages, in part and in full, from the Applicant pursuant to subsections 15(1)(c), (d), (e), 17(1)(a), (b)(i), 18(1)(f), and 29(1) of FOIP. See the Appendix for more information.

[13] I should note that although SGI indicated to the Applicant that it was relying on subsection 15(1)(d) of FOIP as a reason for withholding records from them, SGI did not indicate on its index of records or the records themselves to which pages it was applying subsection 15(1)(d) of FOIP. Further, its submission does not provide arguments for subsection 15(1)(d) of FOIP. Since subsection 15(1)(d) of FOIP is a discretionary exemption, I will not consider the exemption in this review.

## **III DISCUSSION OF THE ISSUES**

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

[14] SGI is a “government institution” as defined by subsection 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 find that I have jurisdiction to conduct this review.

### **2. Did SGI properly apply subsection 29(1) of FOIP?**

[15] SGI applied subsection 29(1) of FOIP to pages P0466, P0626, P0747 and P1074 to P1094.

[16] Subsection 29(1) of FOIP provides:

**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.

[17] Section 29 of FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains consents to its disclosure, or if the disclosure without consent is authorized by one of the enumerated subsections of 29(2) or section 30 of FOIP (*Guide to FOIP*, Chapter 6, “Protection of Privacy”, updated January 18, 2023 [*Guide to FOIP*, Ch. 6], p. 183).

[18] In order to withhold information pursuant to subsection 29(1) of FOIP, the information must qualify as “personal information” as defined by subsection 24(1) of FOIP. To qualify as personal information as defined by subsection 24(1) of FOIP, the information must: 1) be about an identifiable individual; and 2) be personal in nature. Information is about an “identifiable individual” if the individual can be identified from the information (e.g., their name is provided) or if the information, when combined with information otherwise available, could reasonably allow the individual to be identified. To be “personal in nature” means the information provides something identifiable about the individual (*Guide to FOIP*, Ch. 6, pp. 32-33).

[19] In this matter, the introductory wording of subsection 24(1) and subsections 24(1)(d) and (k)(i) of FOIP are relevant. These define “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:

...

(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*;

...

(k) the name of the individual where:

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

[20] In its submission, SGI said:

Personal information is personal information about an identifiable individual. It is defined in paragraph 24(1)(d) of FOIP to include any identifying number, symbol or other particular assigned to the individual and per paragraph 24(1)(k) includes the name of an individual when it appears with other personal information.

An individual's image is personal information. The pictures on P0466, P0626, and P0747 that have portions redacted pursuant to section 29(1) of FOIP show the faces of third parties.

The pictures on P1074-P1094 have portions redacted pursuant to section 29(1) of FOIP that show the name and claim number of a third party. The claim number is an identifying number assigned to the claimant by SGI and is defined as personal information per 24(1)(d) of FOIP. The claimant's name is personal information per s.24(1)(k) of FOIP since it appears with the claim number.

[21] Based on a review of the pages to which SGI applied subsection 29(1) of FOIP, I find that the redacted information qualifies as personal information. The redacted information on pages P0466, P0626, P0747 is images of third party individuals, which qualifies as their personal information based on the introductory wording of subsection 24(1) of FOIP. Further, the redacted information on pages P1074 to P1094 is the name and claim number of a third party individual, which qualifies as their personal information as defined by subsection 24(1)(d) and (k)(i) of FOIP.

[22] I find that SGI properly applied subsection 29(1) of FOIP to pages P0466, P0626, P0747 and P1074 to P1094 and recommend that it continue to withhold this information pursuant to subsection 29(1) of FOIP. See the Appendix for details.

### **3. Did SGI properly apply subsection 18(1)(f) of FOIP?**

[23] SGI applied subsection 18(1)(f) of FOIP to redact reserve amount information that appears on pages P0003 and P0839.

[24] Subsection 18(1)(f) of FOIP provides:

**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;

[25] Subsection 18(1)(f) of FOIP permits refusal of access in situations where release of a record could reasonably be expected to prejudice the economic interest of the Government of Saskatchewan or a government institution. My office uses the following test to determine if a government institution has properly applied this exemption:

Could disclosure reasonably be expected to prejudice the economic interests of the Government of Saskatchewan or a government institution?

(*Guide to FOIP*, Chapter 4: “Exemptions from the Right of Access” updated April 8, 2024 [*Guide to FOIP*, Ch. 4], p. 188)

[26] The *Guide to FOIP*, Ch. 4 at page 190, offers the following definitions:

- “Prejudice” in this context refers to detriment to economic interests.
- “Economic interests” refer to both the broad interests of a government institution and, for the government as a whole, in managing the production, distribution and consumption of goods and services. This also covers financial matters such as the management of assets and liabilities by a government institution and the government institution’s ability to protect its own or the government’s interests in financial transactions.

[27] The *Guide to FOIP*, Ch. 4 at page 190, offers the following examples of harm to economic interests:

- Information in budget preparation documents which could result in segments of the private sector taking actions affecting the government’s ability to meet economic goals (Note: approved budgets are not included as they are tabled in the Legislature as public documents).
- Background material to be used in establishing land costs which if released would affect revenue from the sale of the land.

[28] SGI said the following in its submission:

The redactions made pursuant to section 18(1)(f) show reserve amounts for the claim. The reserving information is the process by which all insurance companies value the potential liability of a claim and track expenditures. Reserving is a reflection of the possible (not actual) value of the claim either at the time the reserve is established or periodically reviewed. As demonstrated in Review Report 104-2017, 018-2016, 010-2016, 098-2015, and 187-2015, SGI regularly withholds this information because it is often not an accurate reflection of the value of the claim and the release of this information has the potential to undermine SGI's ability to negotiate fairly with the customer as a customer may not settle a claim or accept a benefit amount for a fair value if the reserve indications are higher.

[29] As noted in SGI's submission, in my office's [Review Report 098-2015](#) at paragraphs [31] to [32], [Review Report 187-2015](#) at paragraph [42], [Review Report 104-2017](#) at paragraph [36], [Review Report 010-2016](#) at paragraphs [14] to [15], and [Review Report 018-2016](#) at paragraphs [8] to [10], I had found that the release of reserve amount information would prejudice the economic interests of SGI. Similarly, and to be consistent with my previous findings, I find that the release of the reserve amount information on pages P0003 and P0839 would prejudice the economic interests of SGI. I find that SGI properly applied subsection 18(1)(f) of FOIP to pages P0003 and P0839 and recommend it continue to withhold this information pursuant to subsection 18(1)(f) of FOIP. See the Appendix for details.

#### **4. Did SGI properly apply subsection 17(1)(a) of FOIP?**

[30] SGI applied subsection 17(1)(a) of FOIP to pages P0053, P0077, P0081, P0085, P0129, P0175, P079 to P0181, P0259, P0521, P0751 to P0754, P0756, P0787 to P0804, P0979, P1121, P1125 and P1126.

[31] I should note that where SGI applied subsection 17(1)(a) of FOIP, it also applied subsection 17(1)(b)(i) of FOIP. I will consider subsection 17(1)(b)(i) of FOIP later in this Report.

[32] I should also note that I will consider pages P0521, P0751 to P0754, P0756, and P0787 to P0804 in my analysis of subsection 15(1)(c) of FOIP later in this Report.

[33] Subsection 17(1)(a) of FOIP provides:

17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

(a) advice, proposals, recommendations, analyses or policy options developed by or for a government institution or a member of the Executive Council;

[34] My office uses the following two-part test to determine if subsection 17(1)(a) of FOIP applies:

1. Does the information qualify as advice, proposals, recommendations, analyses or policy options?
2. Was the advice, proposals, recommendations, analyses and/or policy options developed by or for a government institution or a member of the Executive Council?

(*Guide to FOIP*, Ch. 4, pp. 128-131)

1. ***Does the information qualify as advice, proposals, recommendations, analyses or policy options?***

[35] Pages 128 to 130 of the *Guide to FOIP*, Ch. 4, provide the following definitions:

- “Advice” is guidance offered by one person to another. It can include the analysis of a situation or issue that may require action and the presentation of options for future action, but not the presentation of facts. Advice encompasses material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation. It can be an implied recommendation. The “pros” and “cons” of various options also qualify as advice. It should not be given a restricted meaning. Rather, it should be interpreted to include an opinion that involves exercising judgement and skill in weighing the significance of fact. It includes expert opinion on matters of fact on which a government institution must make a decision for future action.
- A “proposal” is something offered for consideration or acceptance.
- A “recommendation” is a specific piece of advice about what to do, especially when given officially; it is a suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious. Recommendations relate to a suggested course of action more explicitly and pointedly than “advice”.



- “Analyses” (or analysis) is the detailed examination of the elements or structure of something; the process of separating something into its constituent elements.
- “Policy options” are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made. They would include matters such as the public servant’s identification and consideration of alternative decisions that could be made. In other words, they constitute an evaluative analysis as opposed to objective information.

[36] In its submission, SGI provided the following arguments:

In the email on P0053, a manager sent an email that discusses the claim with another manager and her team and seeks feedback on the process. Recommendations are being requested.

On P0077 and P0081, a manager provides her analysis and asks for advice from another manager in an email and the other manager replies with her analysis and advice. The adjuster is included in both email conversations. Guidance is being offered from one SGI [sic] to another.

On P0085, a manger [sic] provides her recommendations in an email. It is a suggested course of action for certain events.

On P0129, the adjuster provides his analysis of the situation and asks for next steps.

On P0175, an adjuster is relaying a message from SGI’s legal counsel as she provides advice and options about next steps.

On P0179-P0181, an adjuster provides advice on next steps and provides her proposals.

On P0259, SGI’s legal counsel provides advice on next steps.

On P0979, a technical advisor provides his assessment of the other vehicle in the claim and provides recommendations on next steps.

The documents from SGI’s Special Investigation Unit also are redacted under s.17(1)(a) and 17(1)(b)(i) because the unit provides consultation, analysis, and recommendations.

[37] Based on a review, my office identified the following pages to contain advice, analysis, and a recommendation:

- The redacted information in the email timestamped 10:49 a.m. by an SGI employee on P0077 and P0081 qualifies as advice. The email, containing an option for future

action, and is in response to another email timestamped 8:08 a.m. where advice is sought (which will be discussed in my analysis of subsection 17(1)(b)(i) of FOIP).

- The redacted information in the email timestamped 1:08 p.m. on P0129 qualifies as analysis by an adjuster at SGI. The adjuster breaks a claim into its parts as their basis for seeking direction on next steps.
- The redacted information in the email timestamped 3:05 p.m. by legal counsel at SGI on P0259 provides advice on what next steps can be taken.
- The redacted information in the email timestamped 10:58 a.m. by a SGI employee on P0979 contains a recommendation on what steps should be taken.

[38] Therefore, the first part of the two-part test is met for the portions of the pages set out above. I will consider whether they meet the second part of the two-part test later in this Report.

[39] However, for the following pages, I find that the first part of the two-part test for subsection 17(1)(a) of FOIP is not met. That is, the following redacted information does not qualify as advice, proposals, recommendations, analyses, or policy options:

- The redacted information in the email timestamped 11:34 a.m. is an email on P0053 where a SGI employee is seeking advice. The seeking of advice is not advice. However, I will consider this email in my analysis of subsection 17(1)(b)(i) of FOIP later in this Report.
- The redacted information in the email timestamped 10:43 a.m. on P0085 appears to be direction by a manager to an employee. Direction does not qualify as advice, recommendations, analyses or policy options.
- The redacted information in the email timestamped 9:31 a.m. on P0175 appears to be a summary of what has happened, which is not advice, proposals, recommendations, analyses or policy options.
- The redacted information on P0179 to P0181 appears to be direction by a manager to employees. Direction does not qualify as advice, recommendations, analyses or policy options.
- The redacted information on P1121 is a statement of what happened, which is not advice, proposals, recommendations, analyses or policy options.

- The redacted information in the email timestamped 3:02:57 p.m. on P1125 are questions about who will be responsible for the next action to be taken, which is not advice, proposals, recommendations, analyses or policy options.
- The redacted information on P1126 contains questions about the status of a claim, which is not advice, proposals, recommendations or policy options.

[40] Therefore, I find SGI did not properly apply subsection 17(1)(a) of FOIP to the identified portions of the pages set out above. I will consider these pages in my analysis of subsection 17(1)(b)(i) of FOIP.

**2. Was the advice, proposals, recommendations, analyses and/or policy options developed by or for a government institution or a member of the Executive Council?**

[41] Pages 131 to 133 of my office's *Guide to FOIP*, Ch. 4, provides that the advice, proposals, recommendations, analyses and/or policy options can be developed by a government institution or for a government institution including one not relying on the exemption, and it also provides the definitions for the following term and phrase:

“Developed by or for” means the advice, proposals, recommendations, analyses and/or policy options must have been created either: 1) within the government institution, or 2) outside the government institution but for a government institution and at its request (for example, by a service provider or stakeholder).

[42] For information to be developed by or for a government institution, the person developing the information should be an official, officer or employee of the government institution, be contracted to perform services, be specifically engaged in an advisory role (even if not paid) or otherwise have a sufficient connection to the government institution (*Guide to FOIP*, Ch. 4, p. 131)

[43] To put it another way, in order to be “developed by or for” the government institution, the advice, proposals, recommendations, analyses and/or policy options should:

- Be either sought, be expected or be part of the responsibility of the person who prepared the record.

- Be prepared for the purpose of doing something, for example, taking an action or making a decision.
- Involve or be intended for someone who can take or implement the action.

*(Guide to FOIP, Ch. 4, pp. 131-132)*

[44] The exemption does not generally apply to records or parts of records that in themselves reveal only the following:

- That advice was sought or given;
- That particular persons were involved in the seeking or giving of advice; or
- That advice was sought or given on a particular topic or at a particular time.

*(Guide to FOIP, Ch. 4, pp. 131-132)*

[45] Earlier, I had found that:

- The email timestamped 10:49 a.m. on P0077 and P0081 qualified as advice.
- The email timestamped 1:08 p.m. on P0129 qualified as analysis.
- The email timestamped 4:05 on P0259 qualified as advice.
- The email timestamped 10:58 a.m. on P0979 qualified as recommendation.

[46] Based on a review of the above emails, my office determined that the advice, analysis and recommendation were developed by SGI employees (see paragraph [37]) for it, a government institution. As such, the redacted contents in the emails listed on the above pages meet the second part of the two-part test. I find that subsection 17(1)(a) of FOIP applies to:

- The email timestamped 10:49 a.m. on P0077 and P0081.
- The email timestamped 1:08 p.m. on P0129.
- The email timestamped 4:05 on P0259.
- The email timestamped 10:58 a.m. on P0979.

[47] My findings and recommendations are set out in the Appendix.

**5. Did SGI properly apply subsection 17(1)(b)(i) of FOIP?**

[48] As noted earlier, SGI applied subsection 17(1)(b)(i) of FOIP to the same portions of the same pages to which it applied subsection 17(1)(a) of FOIP. I will not consider the portions of the pages to which I have already found SGI properly applied subsection 17(1)(a) of FOIP. I will only consider the portions of the pages to which I have not found any other exemption applies.

[49] Subsection 17(1)(b)(i) of FOIP provides:

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;

[50] My office uses the following two-part test to determine if subsection 17(1)(b) of FOIP applies:

1. Does the record contain consultations or deliberations?
2. Do the consultations or deliberations involve officers or employees of a government institution?

(*Guide to FOIP*, Ch. 4, pp. 136-138)

**1. Does the record contain consultations or deliberations?**

[51] Pages 136 to 138 of my office's *Guide to FOIP*, Ch. 4, provide the following definitions:

- "Consultation" means the action of consulting or taking counsel together: deliberation, conference; a conference in which the parties consult and deliberate. A consultation can occur 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. It can include consultations about prospective future actions and outcomes in response to a developing situation. It can also include past courses of action. For example, where an employer is considering what to do with

an employee in the future, what has been done in the past can be summarized and would qualify as part of the consultation or deliberation.

- “Deliberation” means the action of deliberating (to deliberate: to weigh in mind; to consider carefully with a view to a decision; to think over); careful consideration with a view to a decision; A deliberation can occur when there is a discussion or consideration of the reasons for or against an action. It can refer to discussions conducted with a view towards making a decision.

[52] SGI’s arguments for subsection 17(1)(b) of FOIP are the same as the arguments it provided for subsection 17(1)(a) of FOIP, which I quoted earlier.

[53] In past several past reports, including [Review Report 142-2023](#) at paragraph [44], [Review Report 168-2023](#) at paragraph [34], [Review Report 301-2023](#) at paragraph [25], [Review Report 016-2024](#) at paragraph [171], I cite [Order F2013-13](#) where the Office of the Information and Privacy Commissioner of Alberta (AB IPC) explained the difference between subsections 24(1)(a) and (b) of Alberta’s *Freedom of Information and Protection of Privacy Act*, which are similar to subsections 17(1)(a) and (b) of FOIP:

[para 146] I agree with the interpretation Commissioner Clark assigned to the terms “consultation” and “deliberation” generally. However, as I stated in Order F2012-10, **section 24(1)(b) differs from the section 24(1)(a) in that section 24(1)(a) is intended to protect communications developed for a public body by an advisor, while section 24(1)(b) protects communications involving decision makers.** That this is so is supported by the use of the word deliberation: only a person charged with making a decision can be said to deliberate that decision. Moreover, “consultation” typically refers to the act of seeking advice regarding an action one is considering taking, but not to giving advice in relation to it. Information that is the subject of section 24(1)(a) may be voluntarily or spontaneously provided to a decision maker for the decision maker’s use because it is the responsibility of an employee to provide information of this kind; however, such information cannot be described as a “consultation” or a “deliberation”. **Put simply, section 24(1)(a) is concerned with the situation where advice is given, section 24(1)(b) is concerned with the situation where advice is sought or considered.**

[Emphasis added]

[54] Therefore, even though SGI applied subsection 17(1)(b) of FOIP to where it also applied subsection 17(1)(a) of FOIP, these two exemptions cannot be used synonymously.

[55] Based on a review, my office identified the following pages to contain consultations or deliberations:

- The redacted information in the email timestamped 11:34 a.m. on page P0053 is an email by a SGI employee seeking the advice of another SGI employee, which qualifies as a consultation.
- The email timestamped 8:08 a.m. that appears on P0077 and P0081 is an email by a SGI employee where they are seeking advice from another SGI employee, which qualifies as a consultation.

[56] Therefore, the first part of the two-part test for subsection 17(1)(b)(i) of FOIP is met for the portions of the pages listed above. I will consider whether the emails on the above pages meet the second part of the two-part test later in this Report.

[57] However, for the following pages, I find that the first part of the two-part test for subsection 17(1)(b)(i) of FOIP is not met. That is, the redacted information does not qualify as consultations or deliberations:

- The redacted information in the email timestamped 10:43 a.m. on P0085 appears to be direction by a manager to an employee. Direction does not qualify as a consultation or deliberation.
- The redacted information in the email timestamped 9:31 a.m. on P0175 appears to be a summary of what has happened, which does not qualify as a consultation or deliberation.
- The redacted information on P0179 to P0181 appears to be direction by a manager to employees. Direction does not qualify as a consultation or deliberation.
- The redacted information on P1121 is a statement of what happened, which does not qualify as a consultation or deliberation.
- The redacted information in the email timestamped 3:02:57 p.m. on P1125 are questions about who will be responsible for the next action to be taken, which is not a consultation or deliberation.
- The redacted information on P1126 contains questions about the status of a claim, which does not qualify as a consultation or deliberation.

[58] Therefore, I find SGI did not properly apply subsection 17(1)(b) of FOIP to the identified portions of the pages set out above. With the exception of P1125, which I will consider in my analysis of subsection 15(1)(c) of FOIP, I recommend that SGI release the redacted contents on P0085, P0175, P0179 to P0181, P1121 and P1126 within 30 days of issuance of this Report. My findings and recommendations are set out in the Appendix.

***2. Do the consultations or deliberations involve officers or employees of a government institution?***

[59] Page 138 of *Guide to FOIP*, Ch. 4, provides the following definitions:

- “Involving” means including.
- “Officers or employees of a government institution”: “Employee of a government institution” means an individual employed by a government institution and includes an individual retained under a contract to perform services for the government institution.

[60] Earlier, I found the following:

- The email timestamped 11:34 a.m. on P0053 qualified as a consultation.
- The email timestamped 8:08 a.m. on P0077 and P0081 qualified as a consultation.

[61] Based on a review of the above emails, my office determined that the consultations involved SGI employees. Specifically, each email represented the seeking of advice (a consultation) by a SGI employee to another (see paragraph [55]). Therefore, the consultations involved employees of a government institution. As such, the redacted contents in the emails listed on the above pages meet the second part of the two-part test. I find that subsection 17(1)(b) of FOIP applies to:

- The email timestamped 11:34 a.m. on P0053.
- The email timestamped 8:08 a.m. on P0077 and P0081.

[62] I recommend that SGI continue to withhold the above emails on the above pages.

**6. Did SGI properly apply subsection 15(1)(c) of FOIP?**



[63] SGI applied subsection 15(1)(c) of FOIP to pages P0521, P0751 to P0754, P0756, P0787 to P0804, P1121, P1125 and P1126.

[64] Subsection 15(1)(c) of FOIP provides:

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

...

(c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

[65] My office uses the following two-part test to determine if subsection 15(1)(c) applies:

1. Does the government institution's activity qualify as a "lawful investigation"?
2. Does one of the following exist?
  - a. Could the release of the information interfere with a lawful investigation?
  - b. Could the release disclose information with respect to a lawful investigation?

(*Guide to FOIP*, Ch. 4, pp. 53-54)

***1. Does the government institution's activity qualify as a "lawful investigation"?***

[66] A "lawful investigation" is an investigation that is authorized or required and permitted by law. The government institution should identify the legislation under which the investigation is occurring. The investigation can be concluded, active and ongoing or be occurring in the future (*Guide to FOIP*, Ch. 4, p. 53).

[67] In its submission, SGI said:

Members of SIU are special constables pursuant to section 76 of *The Police Act, 1990* and are employees of SGI that do investigations on behalf of SGI when there are concerns about the validity of claims or benefits under *The Automobile Accident Insurance Act*.

[68] Based on a review, the contents on pages P0521, P0751 to P0754, P0756, P0787 to P0804, and the redacted information in the email timestamped 2:52pm on page P1125 indicate that a “lawful investigation” pursuant to section 76 of *The Police Act, 1990* involving SGI’s Special Investigation Unit (SIU) occurred. As such, the first part of the two-part test is met.

**2. Does one of the following exist?**

**a. Could the release of the information interfere with a lawful investigation?**

**b. Could the release disclose information with respect to a lawful investigation?**

[69] SGI did not identify whether the release of the information could interfere with a lawful investigation or whether the release could disclose information with respect to a lawful investigation.

[70] However, based on a review of the records, my office will consider the second circumstance – whether the release could disclose information with respect to a lawful investigation.

[71] Page 54 of *Guide to FOIP*, Ch. 4, defines “with respect to” words of the widest possible scope; the phrase is probably the widest of any expression intended to convey some connection between two related subject matters.

[72] Further, page 54 of the *Guide to FOIP*, Ch. 4, explains that section 15 of FOIP uses the word could instead of “could reasonably be expected to” as seen in other provisions of FOIP. The threshold for “could” is somewhat lower than a reasonable expectation. The requirement for could is simply that the release of the information could have the specified result. There would still have to be a basis for asserting the outcome could occur. If it is fanciful or exceedingly remote, the exemption should not be invoked.

[73] The disclosure of these pages would disclose information about the investigation. As such, pages P0521, P0751 to P0754, P0756, P0787 to P0804, and the redacted information in the email timestamped 2:52pm on page P1125 meet both parts of the two-part test for

subsection 15(1)(c) of FOIP. I find that SGI properly applied subsection 15(1)(c) of FOIP to these pages. I recommend that SGI continue to withhold this information pursuant to subsection 15(1)(c) of FOIP. My findings and recommendations are set out in the Appendix.

[74] However, the redacted contents on the following pages do not meet the second part of the two-part test:

- The redacted contents in the email timestamped 9:46 a.m. on page P1121 is a statement about something that was done. The release of such information would not disclose information with respect to a lawful investigation.
- The release of the redacted information in the email timestamped 3:02:57 p.m. on page P1125 are questions about who will be responsive for the next action to be taken would not disclose information with respect to a lawful investigation.

[75] I find, therefore, that SGI has not properly applied subsection 15(1)(c) of FOIP to P1121 and P1124, but I will consider if it properly applied subsection 15(1)(e) of FOIP to these pages.

## 7. Did SGI properly apply subsection 15(1)(e) of FOIP?

[76] SGI applied subsection 15(1)(e) of FOIP to the same portions to the same pages to which it applied subsection 15(1)(c) of FOIP. I have already found that subsection 15(1)(c) of FOIP applies to P0521, P0751 to P0754, P0756, P0787 to P0804 and to the redacted information in the email timestamped 2:52 p.m. on page P1125. Therefore, I will only need to consider whether subsection 15(1)(e) of FOIP applies to pages P1121 and P1125.

[77] Subsection 15(1)(e) of FOIP provides:

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

...

(e) reveal investigative techniques or procedures currently in use or likely to be used;

[78] My office uses the following two-part test to determine if subsection 15(1)(e) of FOIP applies:

1. Does the information in question constitute “investigative techniques” or “procedures?”
2. Are the investigative techniques and/or procedures currently in use or likely to be used?

(*Guide to FOIP*, Ch. 4, p. 60)

[79] Page 60 of the *Guide to FOIP*, Ch. 4, provides the following definitions:

- “Investigative techniques and procedures” mean techniques and procedures used to conduct an investigation or inquiry for the purpose of law enforcement. The techniques or procedures must include specific steps. General information (such as forms and standard policies that do not include specific investigative steps and procedures) would not qualify. Routine, common or customary investigative techniques and procedures would not qualify. Generally known investigative techniques and procedures which the public is already aware of would not qualify.
- “Likely” means probable, a likely outcome; reasonably expected.

[80] SGI did not provide arguments as to how the release of the redacted information could reveal investigative techniques or procedures.

[81] As noted earlier, the redacted contents in the email timestamped 9:46 a.m. on page P1121 is a statement about what was done. The information is not an investigative technique or procedure.

[82] The redacted information in the email timestamped 3:02:57 p.m. on page P1125 includes questions about who will be responsible for the next action to be taken. The information is not an investigative technique or procedure.

[83] Finally, the redacted information on page P1126 contains questions about the status of a claim. Such information is not an investigative technique or procedure.

[84] I find that SGI has not properly applied subsection 15(1)(e) of FOIP to the information on P1121 and P1125 and recommend it release this information to the Applicant within 30 days of the issuance of this Report. See the Appendix for my findings and recommendations.

**8. Is there information in the records at issue that is not responsive to the Applicant's access to information request?**

[85] SGI identified pages P0055, P0057 and P0919 as non-responsive to the Applicant's access request.

[86] When a government institution receives an access to information request, it must determine what information is responsive to the access request. 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" (*Guide to FOIP*, Chapter 3: "Access to Records", updated May 5, 2023 [*Guide to FOIP*, Ch. 3], pp. 26-27).

[87] In its submission, SGI said:

The redactions marked as non-responsive to the applicant's FOI request are documents that do not pertain to the applicant's claim number. SGI chose to label them as non-responsive, but they would also be exempt from disclosure pursuant to section 29(1) of FOIP as the information in them refers to a third party. P0055 and P0057 were a misfiled email chain that discusses another claim. The redaction on P0919 displays information about claims of other customers that were being worked on by the same SGI employee team.

[88] Based on a review, my office verified that the information marked as non-responsive is indeed information about claims by third party individuals. I find that the information on pages P0055, P0057 and P0919 is non-responsive. I also agree that the information would be exempt from disclosure pursuant to subsection 29(1) of FOIP as the information is about other claimants. I recommend SGI continue to withhold it pursuant to subsection 29(1) of FOIP.

**9. Did SGI conduct a reasonable search for records?**

[89] When the Applicant requested a review by my office, they indicated they believed SGI did not provide them with all their personal health information. Specifically, they indicated that SGI should have received documentation from a number of health practitioners, but SGI has not provided such records to them.

[90] In an email dated August 2, 2024, SGI indicated that it released the Applicant's personal health information to the Applicant under Part VIII of *The Automobile Accident Insurance Act* (AAIA) and not *The Health Information Protection Act* (HIPA).

[91] Regardless of whether the information was released to the Applicant under the AAIA or HIPA, my office is reviewing whether SGI conducted a reasonable search for records.

[92] My office reviews a government institution's efforts to search for records when it responds to an Applicant's access request by indicating that records do not exist. The focus of a search review by my office is whether the government institution conducted a reasonable search. As noted above, a reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances (*Guide to FOIP*, Ch. 3, pp. 13-14).

[93] SGI's submission provided:

SGI used its stand search process and checklist to find responsive documents. SGI has provided the applicant with information on all records stored in its general insurance system for claim OP SK 005325187 and OP SK 005325099. The Special Investigations Unit (SIU) provided 18 documents that were stored by them and the Fair Practices Office (FPO) provided 14 pages of emails that they had sent, received or been included on. These are all the places and departments which SGI would store documents related to claims.

[94] Since the Applicant's concern was regarding their personal health information, my office sought clarification from SGI regarding where the Applicant's personal health information was stored. SGI clarified that all information on claims, including health information, would be stored on the general insurance system (GIS):

All personal information for claims are stored in our GIS system. We ask the Special investigations unit (SIU) and the fair practice office (FPO) for additional information such as emails, interviews and other documents used to complete their reports, **they do not request or hold any personal health information as they would refer to GIS for this.** Additionally, we ask the unjury [sic] representative to send all additional documents for the time of the request.

[Emphasis added]

[95] Based on the above, including the fact that health information related to a claim is stored on GIS and that SGI searched GIS for records, I find that SGI has conducted a reasonable search for records. I recommend that SGI take no further action regarding search.

#### IV FINDINGS

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

[97] I find that SGI properly applied subsection 29(1) of FOIP.

[98] I find that SGI properly applied subsection 18(1)(f) of FOIP to pages P0003 and P0839.

[99] I find that SGI properly applied subsection 17(1)(a) of FOIP to portions of pages P0077, P0081, P0129, P0259, and P0979.

[100] I find that SGI did not properly apply subsection 17(1)(a) of FOIP to portions of pages P0053, P0085, P0175, P0179 to P0181, P1121, P1125, and P1126.

[101] I find that SGI properly applied subsection 17(1)(b) of FOIP to portions of pages P0053, P0077 and P0081.

[102] I find that SGI did not properly apply subsection 17(1)(b) of FOIP to portions of pages P0085, P0175, P0181, P1121, P1125 and P1126.

[103] I find that SGI properly applied subsection 15(1)(c) of FOIP to pages P0521, P0751 to P0754, P0756, P0787 to P0804, and the redacted information in the email timestamped 2:52 p.m. on page P1125.

[104] I find that SGI did not properly apply subsection 15(1)(c) of FOIP to page P1121 and to the email timestamped 3:02:57 p.m. on page P1125.

[105] I find that SGI has not properly applied subsection 15(1)(e) of FOIP.

[106] I find that the information on pages P0055, P0057 and P0919 is the personal information of a third party individuals and is non-responsive to the Applicant's access request.

[107] I find that SGI has conducted a reasonable search for records.

## **V RECOMMENDATIONS**

[108] I recommend that SGI comply with the recommendations set out in the Appendix.

[109] I recommend that SGI take no further action regarding search.

Dated at Regina, in the Province of Saskatchewan, this 23<sup>rd</sup> day of October, 2024.

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



## Appendix

Page	Exemptions applied by SGI	IPC Finding(s)	IPC Recommendations
P0003	18(1)(f) of FOIP	18(1)(f) of FOIP applies.	Continue to withhold redacted content.
P0053	17(1)(a), 17(1)(b)(i) of FOIP	17(1)(b) of FOIP applies.	Continue to withhold redacted content.
P0055	Non-responsive	Information is the personal information on third party individuals and is non-responsive to the Applicant's access request.	Continue to withhold page.
P0057	Non-responsive	Information is the personal information on third party individuals and is non-responsive to the Applicant's access request.	Continue to withhold page.
P0077	17(1)(a), 17(1)(b)(i) of FOIP	17(1)(b) of FOIP applies to redacted content in email timestamped 8:08 a.m.  17(1)(a) of FOIP applies to the redacted contents in email timestamped 10:49 a.m.	Continue to withhold redacted content.
P0081	17(1)(a), 17(1)(b)(i) of FOIP	17(1)(b) of FOIP applies to redacted content in email timestamped 8:08 a.m.  17(1)(a) of FOIP applies to the redacted contents in email timestamped 10:49 a.m.	Continue to withhold redacted content.
P0085	17(1)(a), 17(1)(b)(i) of FOIP	Neither 17(1)(a) nor 17(1)(b) of FOIP applies.	Release.
P0129	17(1)(a), 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies.	Continue to withhold redacted content.
P0175	17(1)(a), 17(1)(b)(i) of FOIP	Neither 17(1)(a) nor 17(1)(b) of FOIP applies.	Release.
P0179 to P0181	17(1)(a), 17(1)(b)(i) of FOIP	Neither 17(1)(a) nor 17(1)(b) of FOIP applies.	Release.
P0259	17(1)(a), 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies.	Continue to withhold redacted content.
P0466	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.

P0521	17(1)(a), 17(1)(b)(i), 15(1)(c), 15(1)(e) of FOIP	15(1)(c) of FOIP applies.	Continue to withhold redacted content.
P0626	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P0747	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P0751 to P0754	17(1)(a), 17(1)(b)(i), 15(1)(c), 15(1)(e) of FOIP	15(1)(c) of FOIP applies.	Continue to withhold redacted content.
P0756	17(1)(a), 17(1)(b)(i), 15(1)(c), 15(1)(e) of FOIP	15(1)(c) of FOIP applies.	Continue to withhold redacted content.
P0787 to P0804	17(1)(a), 17(1)(b)(i), 15(1)(c), 15(1)(e) of FOIP	15(1)(c) of FOIP applies.	Continue to withhold redacted content.
P0839	18(1)(f) of FOIP	18(1)(f) of FOIP applies.	Continue to withhold redacted content.
P0919	Non-responsive	Information is the personal information on third party individuals and is non-responsive to the Applicant's access request.	Continue to withhold page.
P0979	17(1)(a), 17(1)(b)(i) of FOIP	17(1)(a) of FOIP applies.	Continue to withhold redacted content.
P1074	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1075	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1076	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1077	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1078	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1079	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1080	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1081	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1082	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1083	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.

P1084	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1085	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1086	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1087	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1088	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1089	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1090	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1091	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1092	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1093	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1094	29(1) of FOIP	29(1) of FOIP applies.	Continue to withhold redacted content.
P1121	17(1)(a), 17(1)(b)(i), 15(1)(c), 15(1)(e) of FOIP	17(1)(a), 17(1)(b)(i), 15(1)(c), and 15(1)(e) of FOIP do not apply.	Release.
P1125	17(1)(a), 17(1)(b)(i), 15(1)(c), 15(1)(e) of FOIP	15(1)(c) of FOIP applies to redacted content in email timestamped 2:52 p.m.  17(1)(a), 17(1)(b)(i), 15(1)(c), and 15(1)(e) of FOIP do not apply to remainder of redacted contents.	Continue to withhold the redacted contents in email timestamped 2:52 p.m.  Release remainder.
P1126	17(1)(a), 17(1)(b)(i) of FOIP	Neither 17(1)(a) nor 17(1)(b)(i) of FOIP apply.	Release.