Office of the
Saskatchewan Information
and Privacy Commissioner

# INVESTIGATION REPORT 199-2020

## Saskatchewan Government Insurance

**November 24, 2021**

**Summary:** The Complainant submitted two claims to Saskatchewan Government Insurance (SGI) pursuant to Part VIII of *The Automobile Accident Insurance Act* (AAIA). Then, the Complainant requested a copy of each of the claim files from SGI. After reviewing the files, the Complainant alleged that SGI collected information that was not related to their claims. In other words, the Complainant asserted that SGI over-collected their personal health information. The Complainant submitted a complaint to the Commissioner. Since section 4(4)(b) of *The Health Information Protection Act* (HIPA) provides that Parts II, IV and V of HIPA do not apply to personal health information obtained for the purposes of Part VIII of the AAIA, he found that Part IV of HIPA does not apply to the personal health information at issue. He recommended that SGI request that the Minister of Justice amend section 24(1.2) of *The Freedom of Information and Protection of Privacy Act* (FOIP) to also include personal health information in the possession or under the control of SGI.

## I BACKGROUND

[1] The Complainant submitted a claim with Saskatchewan Government Insurance (SGI) in 2011. In 2012, the Complainant submitted a privacy complaint with my office with concerns over SGI's safeguards. The matter was informally resolved and my office closed its investigation file in 2013. Then, in March of 2015, the Complainant approached my office with additional concerns, including how they perceived SGI to be over-collecting their personal health information. In April of 2015, the Complainant withdrew their complaint.

[2] In 2017, the Complainant submitted a second claim with SGI.

[3] In late 2019, the Complainant requested copies of both their claim files with SGI. They received one on November 14, 2019 and the other on February 11, 2020.

[4] On August 18, 2020, my office received a privacy complaint from the Complainant. The Complainant had reviewed the files and alleged that SGI continued to collect personal health information that was not relevant to their claims. In other words, the Complainant asserted that SGI had over-collected their personal health information.

[5] Since the Complainant had submitted a privacy complaint in March of 2015 but then withdrew it in April of 2015, and because in most cases my office will only investigate alleged privacy breaches within two years of discovery, my office indicated to the Complainant that it would only focus on an investigation on information dated between March 16, 2015 and February 11, 2020.

[6] On October 1, 2020, my office notified both SGI and the Complainant that it would be undertaking an investigation.

## II DISCUSSION OF THE ISSUES

### 1. Does Part IV of *The Health Information Protection Act* (HIPA) apply to this matter?

[7] SGI is a "government institution" as defined by section 2(1)(d)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and is therefore subject to FOIP as it relates to "personal information".

[8] SGI is also a "trustee" with custody or control of personal health information as defined by section 2(t)(i) of *The Health Information Protection Act* (HIPA).

[9] However, my consideration of whether I have jurisdiction does not end there.

[10] In its submission, SGI explained the information in question was collected for purposes of Part VIII of *The Automobile Accident Insurance Act* (AAIA). SGI then asserted that HIPA did not apply in this case pursuant to section 4(4)(b) of HIPA:

> It is SGI's position that the OIPC does not have jurisdiction under HIPA to conduct investigations into matters that relate to Parts II, IV, or V of HIPA, where the personal health information was obtained for the purpose of Part VIII of the AAIA. The exemption under subsection 4(4)(b) clearly excludes these parts from application.

[11] Section 4(4)(b) of HIPA removes 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 of the AAIA. Section 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*;

[12] 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.

[13] As summarized in the background of this Report, the information and records at issue are related to two injury claims by the Complainant. Therefore, I find that information and records at issue in this case were obtained by SGI for the purposes of Part VIII of the AAIA.

[14] The Complainant's concern is that SGI is over-collecting personal health information for the purpose of their claims. Since the information was obtained by SGI for the purpose of Part VIII of the AAIA, then I find that Part IV of HIPA does not apply to the personal health information at issue in this matter.

[15] However, I acknowledge the importance of the Complainant's concern regarding the alleged over-collection of their personal health information. It is unfortunate that I do not have jurisdiction to conduct this investigation and potentially assuage their concern. Even if the over-collection is merely perceived, this perception can greatly affect an individual's

willingness to seek healthcare if they believe that there are no boundaries to what a government institution such as SGI may collect about them. It is better and empowering for individuals if my office can provide a neutral oversight to ensure that SGI is collecting, using, and disclosing personal health information in accordance with FOIP and/or HIPA.

[16] In my Review Report 169-2020, I noted section 24(1.1) of FOIP provides that "personal information" does not include information that constitutes personal health information as defined in HIPA. I noted that the purpose of the Legislative Assembly in enacting section 24(1.1) of FOIP was presumably to avoid duplication in legislative coverage. However, in doing so, a gap was created where neither FOIP nor HIPA applies to the information collected, used and disclosed by SGI in the course of its work under the AAIA. I said there is no compelling public policy or basis for SGI to continue to be exempt from, or have a special position with respect to, the legislation and administration when it comes to certain parts of FOIP and HIPA that applies to other public bodies in Saskatchewan.

[17] Also in Review Report 169-2020, I noted a similar long standing issue existed with personal information and personal health information collected by Saskatchewan Workers' Compensation Board (WCB) for purposes of sections 172 and 174 of *The Workers' Compensation Act, 2013*. However, this issue was resolved when the Legislative Assembly amended FOIP and included section 24(1.2) of FOIP, which clearly provides that personal health information in the possession or control of the WCB is personal information for the purposes of FOIP. Therefore, in that Review Report, I made two recommendations. First, I recommended 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. Second, I recommended that the Minister of Justice amend section 24(1.2) of FOIP to include personal health information in the possession or under the control of SGI.

[18] In response to my recommendations, SGI said that it was "always willing to collaborate with [the Ministry of Justice] on any amendments to FOIP they bring forward". The Ministry of Justice said it, "will take this recommendation into consideration at such time that the legislation is next amended".

[19] In its submission to my office for this particular investigation, SGI noted that section 191 of the AAIA provides individuals with a right to an appeal to either the Accident Injury Appeal Commission or to the Court of Queen's Bench. Therefore, SGI asserted that the AAIA, "does have options to address any perceived attempts to over collect personal health information and there is therefore not a 'gap' in the legislation that needs to be corrected".

[20] While I take SGI's point, relying solely on the process outline in section 191 of the AAIA is a purely reactive approach. FOIP imposes duties and obligations upon government institutions such as SGI to proactively undertake privacy-enhancing practices, including observing the need-to-know and data minimization principles that underlie Part IV of FOIP.

[21] Since SGI did not respond to my recommendation in Review Report 169-2020 directly, I reiterate my recommendation. 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.

## III FINDINGS

[22] I find that the information and records at issue in this case were obtained by SGI for the purposes of Part VIII of the AAIA.

[23] Since the information was obtained by SGI for the purpose of Part VIII of the AAIA, then I find that Part IV of HIPA does not apply to the personal health information at issue in this matter.

[24] I find that I do not have jurisdiction to conduct this investigation.

## IV RECOMMENDATION

[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.

Dated at Regina, in the Province of Saskatchewan, this 24th day of November, 2021.

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