Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 276-2024

Saskatchewan Government Insurance

February 26, 2025

Summary: The Applicant requested a copy of their personal health information from the Saskatchewan Government Insurance (SGI). SGI responded by providing the Applicant access to records containing the Applicant's personal health information but withheld one page, in its entirety, from the Applicant. SGI cited subsection 38(1)(f) of *The Health Information Protection Act* (HIPA) as its reason for refusing access. The Applicant requested a review by the A/Commissioner. The A/Commissioner found that SGI properly applied subsection 38(1)(f) of HIPA to the record. He recommended that SGI continue to refuse the Applicant access to the record at issue pursuant to subsection 38(1)(f) of HIPA.

I BACKGROUND

[1] Some time in early 2024, Saskatchewan Government Insurance (SGI) received a completed medical reporting form about the Applicant pursuant to section 283 of *The Traffic Safety Act*. The individual who provided the form to SGI indicated they were providing it in confidence to SGI.

[2] On May 17, 2024, SGI sent a letter to a driver (the Applicant) requesting that they submit a medical report by June 16, 2024. SGI said:

> Please submit your report to our office by **16Jun2024**. If your report is not received by this date, or is appraised as unsatisfactory, medical suspension will be placed on your driver's licence. The suspension will remain in effect until a satisfactory report is received by our office.

[3] Then, in a letter dated June 24, 2024, to the Applicant, SGI indicated it had not received the medical report. Therefore, SGI said that the Applicant's licence was suspended effective June 17, 2024.

[4] On July 15, 2024, SGI received the following access to information request from the Applicant:

> Any and all information referencing [Name of Applicant] (Born [Year-Month-Date] Sask DL [Driver's License number) obtained and/or generated between 2024-04-01 and 2024-07-09 by SGI, its Medical Review Unit, and its agents.
>
> Records to include, but not linked to, all medical reports and/or information; as well as notes, email facsimile, and postal correspondence generated or received (including internal SGI communication).

[5] In a letter dated August 15, 2024, SGI responded to the Applicant. SGI provided the Applicant access to nine pages of records. However, it withheld a medical reporting form (one page) in its entirety. SGI cited subsection 38(1)(f) of *The Health Information Protection Act* (HIPA) as its reason for refusing access to the record.

[6] On October 10, 2024, the Applicant requested a review by my office.

[7] On December 16, 2024, my office notified both SGI and the Applicant that my office would be undertaking a review.

[8] On January 16, 2025, SGI provided the record at issue to my office.

[9] On February 13, 2025, SGI provided its submission to my office. SGI did not agree to sharing the submission with the Applicant. The Applicant did not provide a submission.

II RECORD AT ISSUE

[10] At issue is a medical reporting form, which is one page in length. SGI withheld it in full from the Applicant pursuant to subsection 38(1)(f) of HIPA.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[11] HIPA is engaged when three elements are present: 1) personal health information, 2) a trustee and 3) the trustee has custody or control of the personal health information.

[12] First, the record at issue is a one-page medical reporting form. The record at issue contains the personal health information of the Applicant as defined by subsection 2(1)(m)(i) of HIPA, which provides:

> **2**(1) In this Act:
>
> …
> (m) **"personal health information"** means, with respect to an individual, whether living or deceased:
>
> (i) information with respect to the physical or mental health of the individual;

[13] Second, SGI qualifies as a "trustee" pursuant to subsection 2(1)(t)(i) of HIPA which provides:

> **2**(1) In this Act:
>
> …
> (t) **"trustee"** means any of the following that have custody or control of personal health information:
>
> (i) a government institution;

[14] Third, since SGI is refusing access to the medical reporting form that SGI has possession of, then SGI has custody or control of the record.

[15] Since all three elements are present, HIPA is engaged. Therefore, I find that I have jurisdiction over this matter.

2. Did SGI properly apply subsection 38(1)(f) of HIPA?

[16] Section 32 of HIPA gives individuals the right to obtain access to personal health information about themselves that is in a record in the custody or control of a trustee. Section 32 of HIPA states:

> **32** Subject to this Part, on making a written request for access, an individual has the right to obtain access to personal health information about himself or herself that is contained in a record in the custody or control of a trustee.

[17] Section 38 of HIPA sets out the limited circumstances where a trustee can deny access to personal health information. As noted above, SGI is relying on section 38(1)(f) of HIPA to deny the Applicant access. Section 38(1)(f) of HIPA states:

> **38**(1) Subject to subsection (2), a trustee may refuse to grant an applicant access to his or her personal health information if:
>
> …
> (f) disclosure of the information could interfere with a lawful investigation or be injurious to the enforcement of an Act or regulation.

[18] The Court of Appeal for Saskatchewan (the Court of Appeal) considered subsection 38(1)(f) of HIPA in *Saskatchewan Government Insurance v Giesbrecht, 2025 SKCA 10* (*Giesbrecht*). It explained what a trustee must demonstrate in order for subsection 38(1)(f) of HIPA to apply:

> [62] Correctly interpreted, s. 38(1)(f) of *HIPA* is not limited in its application to situations where, on the balance of probabilities, it can be said that the release of a document will, as a matter of certainty, have one of the consequences referred to in that section, that is, that it *will* interfere with a lawful investigation or be injurious to the enforcement of an Act or regulation. Instead, the provision allows a trustee to withhold personal health information if its disclosure *could* have one of those effects, which requires simply that there is a *possibility* that this result could follow from a disclosure.
>
> [63] I again approach my explanation of this conclusion by first considering the ordinary meaning of the words used in s. 38(1)(f), that is by reading them in their ordinary and grammatical sense. While ordinary meaning should not be confused with a dictionary definition, dictionaries serve to “reveal the range of senses a word may have or the different ways it may be used” (*Sullivan* at §3.02[4]). In this regard, the present tense of *could* is *can*. One of the meanings that the *Oxford English Dictionary*

> *Online* (Oxford University Press, 2024) [OED], gives to the verb *can* is "[e]xpressing objective possibility, opportunity, or absence of prohibitive conditions: be permitted or enabled by the conditions of the case". **It is in this sense that s. 38(1)(f) appears to be using the word *could*. Thus, according to the ordinary meaning of the words used in s. 38(1)(f), a trustee is entitled to withhold a document if there is a possibility that its disclosure might interfere with a lawful investigation or be injurious to the enforcement of an Act or regulation. However, when the words used in s. 38(1)(f) are read in isolation they do not serve to define the degree of likelihood of that possibility being realized.**
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> …
> [67] Finally, there is the standard of "could", which is found in the provision at issue in this appeal. Section 38(1)(f) allows a trustee to refuse to grant an applicant access to their personal health information if "disclosure of the information *could* interfere with a lawful investigation or be injurious to the enforcement of an Act or regulation".
> …
> [73] **Based on these cases, and the ordinary meaning of the words themselves in the context in which they appear in *HIPA*, I conclude that, for a trustee to withhold access to a document under s. 38(1)(f), the trustee need only show a *possibility* that disclosure of the information could interfere with a lawful investigation or be injurious to the enforcement of an Act or regulation.**
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> [Italics in original; bold and underline emphasis added]

[19] In its submission to my office, SGI explained the injury to the enforcement of *The Traffic Safety Act* that could result from the disclosure of medical reporting forms. It said:

> The Saskatchewan Court of Appeal in Saskatchewan.Government.Insurance.v.Giesbrecht, [sic] 2025 SKCA 10 has examined the application of the TSA to section 38(1)(f) of HIPA and found that disclosure of medical review reports does interfere with lawful investigations into violations of the TSA. A trustee need only show an objective possibility that disclosure of the information could interfere with a lawful investigation or be injurious to the enforcement of an Act or regulation.
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> As has been acknowledged by the Court in Giesbrecht, SGI is aware of a number of factors that mean that protecting the confidentiality of medical reporting forms submitted to the medical review unit is important to prevent a chilling effect on reporting and injuriously impacting the medical review units ability to investigate such drivers and SGI's enforcement of the requirements to drive set out in the TSA. See discussion in paragraphs 82 to 89 of Giesbrecht.

[20] SGI relied on paragraphs 82 to 89 of *Giesbrecht* to support its assertion that injury to the enforcement of *The Traffic Safety Act* could result from the disclosure of the record at issue.

Paragraphs 82 to 89 of *Giesbrecht* summarizes SGI's arguments and evidence for why the disclosure of a medical review form, that was submitted to it in confidence, could be injurious to the enforcement of *The Traffic Safety Act*. Paragraphs 82 to 89 (and 93) of *Giesbrecht* provide as follows:

> [82] SGI's promise of confidentiality is intended to encourage persons to make reports to SGI of individuals who may be medically unfit to drive. This promise has an obvious laudatory purpose of identifying those who may present a danger to themselves or others but who would not otherwise be brought to SGI's attention, but for the making of such a report. As I have explained, these individuals have an obligation to self-report but have not done so.
>
> [83] In part, SGI justifies the need to receive reports in confidence based on research brought into evidence through Ms. Nixon's affidavit. It says that this research supports the conclusion that medical-condition reporting is critical to ensuring the safety of drivers and the public, and that optimizing processes for eliciting the cooperation of medical professionals is necessary to ensure the effectiveness of mandatory reporting regimes like that found in s. 283 of the TSA. In this regard, one of the exhibits to Ms. Nixon's affidavit is published research that would support what many may take to be the common-sense proposition that "Drivers with medical conditions and functional impairments are at increased collision risk" (Tracey Ma *et al*, "Impact of medical fitness to drive policies in preventing property damage, injury, and death from motor vehicle collisions in Ontario, Canada" (2020) 75 Journal of Safety Research 251 at 251). The same research, which examined Ontario policies on the subject, quantifies "net road safety savings resulting from medical fitness to drive policies" based on the number of collisions that were prevented by that province's procedures to evaluate the medical fitness of drivers.
>
> [84] SGI also relies on research that it says supports the conclusion that, even in the face of mandatory reporting requirements such as those found in s. 283 of the TSA, medical professionals under-report health concerns about the fitness of their patients to drive (see *Reporting Under Section 157 of The Highway Traffic Act*, Manitoba Law Reform Commission, 2015 CanLIIDocs 267; Donald A. Redelmeir, Vikram Venkatesh & Matthew B. Stanbrook, "Mandatory reporting by physicians of patients potentially unfit to drive" (2008) 2(1): E8-17 Open Medicine 1; A.V. Louie et al, "Assessing fitness to drive in brain tumour patients: a grey matter of law, ethics, and medicine" (2013) 20:2 Current Oncology 90; E. Chan et al, "Multidisciplinary assessment of fitness to drive in brain tumour patients in southwestern Ontario: a grey matter" (2013) 20:1 Current Oncology e4; Raymond W. Jang et al, "Family Physicians' Attitudes and Practices Regarding Assessments of Medical Fitness to Drive in Older Persons" (2007) Journal of General Internal Medicine 531; Shawn C. Marshall and Nathalie Gilbert, "Saskatchewan physicians' attitudes and knowledge regarding assessment of medical fitness to drive" (1999) 160:12 Canadian Medical Association Journal 1701).

[85] Ms. Nixon's affidavit also explains that, to aid SGI with assessing the risks and reasons for under-reporting by medical professionals, with the assistance of the relevant professional governing bodies, it surveyed the members of the Saskatchewan Society of Occupational Therapists and the Saskatchewan Association of Optometrists. In round numbers, (a) 91 percent of occupational therapists and 90 percent of optometrists who responded to the survey had reported a patient to SGI, (b) 51 percent of occupational therapists and 16 percent of optometrists had occasion to ask for their identity to be kept confidential, and (c) 86 percent of occupational therapists and 88 percent of optometrists stated that among the reasons why they would ask that their identity be kept confidential was the risk that disclosure may engage the mental health or physical health or safety of the patient or another person or have a negative impact on that professional's relationship with their patient or the patient's family.

[86] According to SGI's evidence, between 2017 and 2021, the number of confidential reports made to its MRU unit by private citizens varied from a low of 187 to a high of 313 per year. During the same period, the number of reports from physicians, nurse practitioners, occupational therapists and optometrists varied from a high of 3,474 to a low of 2,525. Significantly, in each year, between 7 and 10 percent of these reports were submitted on a confidential basis.

[87] Mr. Giesbrecht offered no evidence to contradict that which SGI filed. I can easily see the foundation in SGI's evidence for Ms. Nixon's statement that, based on it and "feedback [she has] personally received from Medical Practitioners in delivering the Fitness to Drive Program… there would be a chilling effect on reporting if the confidentiality of individuals making such reports is not protected". I further see the evidentiary basis for her stated conclusion that the "chilling effect would have an injurious impact on the MRU's ability to investigate such drivers and [SGI's] enforcement of the requirements to drive set out in the TSA". **All of this convinces me that, based on the evidence before the Court, there is an objective possibility, rising well above a remote possibility and that is far from being speculative, that the disclosure of the Report to Mr. Giesbrecht might interfere with future lawful investigations into a violation of the TSA and might be injurious to the enforcement of that Act.**

[88] In the *2022 Review Report*, which contains the Commissioner's recommendation that SGI provide the Report to Mr. Giesbrecht, the Commissioner wrote that "SGI has not provided any examples or circumstances where a medical practitioner expressed an unwillingness to report, or general concerns about reporting to the MRU" (at para 33). However, the material now brought forward in these proceedings provides the evidence that seems to have been lacking when this recommendation was delivered. **In short, taken together, the evidence provides an objective basis for SGI's stated belief that, without a promise of confidentiality, even some medical professionals, who enjoy the protections afforded to them under s. 283 of the TSA, *might* not in all cases report persons who may be unfit to drive.**

[89] Because of the possibility that some medical professionals who enjoy the protections that s. 283 affords may still not report to SGI individuals who, in their

> opinion, are suffering from a condition that make it dangerous for that person to operate a vehicle, I find it unnecessary to address the arguments that were presented to this Court as to the extent of the protections given to a medical professional under s. 283 of the TSA.
> …
> [93] In summary, **I am satisfied that there is an objective possibility that the disclosure of the Report to Mr. Giesbrecht might interfere with future lawful investigations into violations of the TSA and be injurious to the enforcement of that Act. This meets the test under s. 38(1)(f) of HIPA and justifies SGI's decision to refuse to provide Mr. Giesbrecht with a copy of the Report.**
>
> [Emphasis added]

[21] The case before me is similar to the matter discussed in *Giesbrecht*. That is, I must consider whether SGI has demonstrated that the disclosure of the record at issue – a completed medical reporting form submitted to SGI, in confidence, pursuant to section 283 of *The Traffic Safety Act* - could interfere with future lawful investigations or could be injurious to the enforcement of *The Traffic Safety Act*.

[22] SGI refers to the arguments and evidence it provided to the Court of Appeal in *Giesbrecht* as its arguments in this review. I agree with the Court of Appeal, that based on the argument and evidence summarized in *Giesbrecht*, that the disclosure of a medical reporting form that was submitted, in confidence, to SGI pursuant to section 283 of *The Traffic Safety Act* could interfere with future lawful investigations into a violation of *The Traffic Safety Act* or could be injurious to the enforcement of *The Traffic Safety Act*. I find that SGI properly applied subsection 38(1)(f) of HIPA to the record at issue. I recommend that SGI continue to refuse the Applicant access to the record at issue pursuant to subsection 38(1)(f) of HIPA.

IV FINDINGS

[23] I find that I have jurisdiction over this matter.

[24] I find that SGI properly applied subsection 38(1)(f) of HIPA to the record at issue.

V RECOMMENDATION

[25] I recommend that SGI continue to refuse the Applicant access to the record at issue pursuant to subsection 38(1)(f) of HIPA.

Dated at Regina, in the Province of Saskatchewan, this 26th day of February, 2025.

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