



## **REVIEW REPORT 316-2019**

### **Saskatchewan Government Insurance**

**October 28, 2020**

**Summary:** The Applicant made an access to information request to the Saskatchewan Government Insurance (SGI) for a copy of a confidential report. SGI withheld the record in full from the Applicant pursuant to subsection 38(1)(c) of *The Health Information Protection Act* (HIPA). The Commissioner found that SGI properly applied subsection 38(1)(c) of HIPA to the record and recommended that SGI continue to withhold it in full.

#### **I BACKGROUND**

[1] On August 27, 2019, Saskatchewan Government Insurance (SGI) received the following access to information request from the Applicant:

SGI complaint re [Applicant]. Years – December 31, 2015 ? August 22, 2016. RCMP (Not driving Dec. 31/15. Medical Jan. 12, 2017. Medical Nov. 16, 2018). Letters & medicals.

[2] On August 28, 2019, SGI received the following request for access to information from the Applicant:

Years – December 21, [illegible date] (complaint) August [illegible date], 2019 – letter from RCMP... Medical Jan 12 2018, Nov 16, 2018.

[3] In response to the Applicant dated September 25, 2019, SGI addressed both access to information requests stating, “[y]ou are requesting to know if a complaint was made to SGI, and if so, who made it. You indicated that the potential complaint arose out of an

incident in December 2015”. SGI confirmed to the Applicant that a confidential report had been made on them to SGI’s Medical Review Unit, and that SGI was withholding the record pursuant to subsections 23(1)(a) and (b), and 23(3)(e) of *The Freedom of Information and Protection of Privacy Act* (FOIP), and subsections 38(1)(c) and 38(2) of *The Health Information Protection Act* (HIPA).

[4] On October 3, 2019, the Applicant requested that my office review SGI’s section 7 response. My office narrowed down, with the Applicant, that their concern was about “only the content of the complaint” [content of confidential report]. The Applicant agreed that my office could ask SGI if it would share any portion of the complaint (record) with the Applicant, to which SGI confirmed on October 15, 2019, that it would not release a redacted version of the record in question to the Applicant.

[5] On October 17, 2019, the Applicant asked my office to proceed with a review of only the confidential report. On the same date, my office sent notification to both SGI and the Applicant of my office’s intent to undertake a review.

[6] In this matter, I note that the personal health information in the confidential report is about someone other than the Applicant. However, the Applicant in this matter is a designated surrogate pursuant to subsection 56(f) of HIPA, so can exercise the rights of the individual about whom the information pertains.

## **II RECORDS AT ISSUE**

[7] The record at issue is a one-page document that SGI has withheld in full from the Applicant.

## **III DISCUSSION OF THE ISSUES**

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

[8] SGI qualifies as a “trustee” pursuant to subsection 2(t)(i) of HIPA. Therefore, I have jurisdiction to conduct this review.

**2. Is HIPA engaged in this matter?**

[9] HIPA is engaged when three elements are present: 1) there is a trustee; 2) there is personal health information; and 3) the personal health information involved is in the custody or control of the trustee.

[10] As I have noted, SGI qualifies as a trustee pursuant to subsection 2(t)(i) of HIPA. Therefore, the first element is met.

[11] In its original response to the Applicant, SGI stated that, “[w]e can disclose that the report [the record in question] expressed concern with your coordination and ability to drive”. Upon review of the record in question, I am satisfied that it does contain information relating to concerns about the Applicant’s “coordination and ability to drive”, as SGI has asserted along with other information that relates to the physical or mental health of the individual. This would be personal health information pursuant to subsection 2(m)(i) of HIPA, which meets the second element. Subsection 2(m)(i) of HIPA provides as follows:

**2** 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;

[12] As the personal health information was submitted to SGI regarding the Applicant’s ability to drive, the personal health information is in SGI’s custody or control, which meets the third element. As all three elements are present, I find that HIPA is engaged in this matter.

**3. Has SGI properly applied subsection 38(1)(c) of HIPA?**

[13] Section 32 of HIPA states that an individual has 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 provides as follows:

**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.

[14] Section 38 of HIPA provides limited circumstances where a trustee can deny access to personal health information. With respect to this matter, SGI is relying on subsection 38(1)(c) of HIPA to deny the Applicant access to the personal health information contained in the record in question. This subsection of HIPA provides as follows:

**38(1)** Subject to subsection (2), a trustee may refuse to grant an applicant access to his or her personal health information if:

...

(c) disclosure of the information could reasonably be expected to identify a third party, other than another trustee, who supplied the information in confidence under circumstances in which confidentiality was reasonably expected;

[15] In its submission, SGI asserted the following:

The reporting form is titled [the form]... And the individual who completed the form added “please keep confidential” to two separate areas of the form, as well as “I request this be kept CONFIDENTIAL” in the body of the report... It is clear to SGI that the report was supplied in confidence, and the report can be withheld under section 38(1)(c) of HIPA.

[16] In Review Report H-2008-002, the former Commissioner found that for subsection 38(1)(c) of HIPA to apply, there must be a third party, and the information must have been supplied under circumstances in which confidentiality was reasonably expected.

[17] HIPA does not have a definition for “third party”, but if I consider the definitions of “third party” at subsection 2(1)(j) of FOIP and subsection 2(k) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), “third party” means a person, including an unincorporated entity, other than an applicant or a trustee. Upon review of

the record in question, I am able to tell that it was completed by a third party. As such, the information was supplied to SGI by a third party.

[18] With respect to whether the information was supplied in confidence by the third party, as I quoted at paragraph [15], SGI stated that the third party expected the report to remain confidential. Upon review of the record in question, I note the third party requested three times, in writing, throughout the body of the record that SGI keep the contents confidential. I am satisfied, then, that the individual who supplied the information made their wishes explicit, and that the information was supplied by the third party in confidence.

[19] As the information in the record was supplied by a third party in confidence, I find that SGI has properly applied subsection 38(1)(c) of HIPA.

[20] I note that SGI considered severing pursuant to subsection 38(2) HIPA but decided to withhold the record in its entirety and provided a summary of the record to the Applicant instead. Subsection 38(2) of HIPA provides as follows:

**38(2)** Where a record contains information to which an applicant is refused access, the trustee shall grant access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.

[21] In Review Report 261-2019, also concerning SGI, I stated at paragraph [17] that subsection 38(2) of HIPA affirms that an individual's right is to copies of source documents. To fulfill its obligations pursuant to subsection 38(2) of HIPA, SGI would have had to release the record to the Applicant, with as much severance as would satisfy its ability to withhold information pursuant to subsection 38(1)(c) of HIPA. Because the third party completed the record in question by hand, SGI would need to redact all the handwritten portions in order to not reveal the third-party's identity along with any personal information of the third party. This would render the record meaningless to the Applicant. As such, I recommend that SGI continue to withhold the record in full.

#### **IV FINDING**

[22] I find that SGI has properly applied subsection 38(1)(c) of HIPA.

**V RECOMMENDATION**

[23] I recommend that SGI continue to withhold the record in full.

Dated at Regina, in the Province of Saskatchewan, this 28th day of October, 2020.

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