



## REVIEW REPORT 063-2023

### Ministry of Health

October 17, 2023

#### Summary:

The Ministry of Health (Health) received an access to information request from the Applicant. Health responded to the Applicant denying access to the record, in part, pursuant to subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and subsection 27(1) of *The Health Information Protection Act* (HIPA). The Applicant requested a review from the Commissioner. The Commissioner found that subsection 27(1) of HIPA applied to portions of the record and recommended that Health continue to withhold these portions. The Commissioner also found that if data in the spreadsheet was sufficiently de-identified, what remained would not constitute personal health information pursuant to subsection 27(1) of HIPA. The Commissioner also found that Health did not properly apply subsection 29(1) of FOIP. Accordingly, the Commissioner recommended that Health release some of the information in the record to the Applicant within 30 days of the issuance of this Report, and to continue to withhold other information.

#### I BACKGROUND

[1] On September 7, 2022, the Ministry of Health (Health) received an access to information request from the Applicant for the following:

Please send me information about vaccine adverse effects for the province between January 1 2021 to August 31st 2022 Or whenever you have up to August. Preferably in a spread sheet for easy filtering.

[2] On January 25, 2023, Health responded to the Applicant denying access to the record, in part, pursuant to subsection 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and subsection 27(1) of *The Health Information Protection Act* (HIPA).

[3] On March 6, 2023, my office received a request for review from the Applicant of Health's decision.

[4] On April 10, 2023, my office provided notice to the Applicant and Health of my office's intention to undertake a review.

[5] On June 7, 2023, Health provided its submission to my office. The Applicant did not provide a submission.

## **II RECORDS AT ISSUE**

[6] The record at issue is a 141-page spreadsheet with 18 columns. Health released columns 5 and 6, to the Applicant and withheld columns 1 to 4 of the spreadsheet pursuant to subsection 29(1) of FOIP, and columns 7 to 18 pursuant to subsection 27(1) of HIPA.

## **III DISCUSSION OF THE ISSUES**

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

[7] Health qualifies as a "government institution" pursuant to subsection 2(1)(d)(i) of FOIP. As a government institution, Health qualifies as a trustee pursuant to subsection 2(1)(t)(i) of HIPA. Therefore, I have jurisdiction to conduct this review.

### **2. Did Health properly apply subsection 27(1) of HIPA or subsection 29(1) of FOIP?**

[8] Subsection 27(1) of HIPA applies to the personal health information of an individual, which a trustee cannot disclose unless the trustee has the consent of the subject individual.

[9] "Personal health information" is defined by subsections 2(1)(m) of HIPA as follows:

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;

(ii) information with respect to any health service provided to the individual;

...

(iv) information that is collected:

(A) in the course of providing health services to the individual; or

...

(v) registration information;

[10] As mentioned earlier in this Report, Health withheld columns 7 to 18 of the spreadsheet pursuant to subsection 27(1) of HIPA. These columns contain information regarding vaccine date given, reaction reportable, serious, unusual, unexpected, reaction onset, reaction duration, reaction, treatment, outcome, MHO recommendation, and comments, regarding approximately 1200 patients that attended various health divisions in the province.

[11] I also note that Health withheld columns 1 to 4 of the spreadsheet pursuant to subsection 29(1) of FOIP. The data elements in these four columns are unique identifier, individuals' (patients) initials, their sex and their age. Regarding this information, Health responded as follows:

- The unique identifier is unique to each adverse event following immunization (AEFI) reported in each former regional health authority (RHA) of the Saskatchewan Health Authority (SHA) or First Nations jurisdiction (FNJ) and is coded by year and sequence the AEFI was reported, not when the vaccine was administered. It is a way to reference the AEFIs for the former RHA, the Ministry as well as Public Health Agency of Canada (PHAC). If the Ministry has a question for the former RHA or PHAC has a question it is a reference code.
- It is legislated under the Disease Control regulations that adverse events following immunization must be reported to public health. They in turn submit the completed national AEFI forms to the Ministry of Health. Only COVID-19 and flu AEFIs are entered on an excel spreadsheet to track them.

- The tracking spread sheets were compiled by the Ministry using the AEFI forms submitted by the SHA, FNJs, and pharmacists.

[12] Based on Health’s response, it appears that all the information it collected was from the health system and relates to adverse events experienced by patients following immunization.

[13] In terms of the patients’ initials, sex and age, that would have been collected as part of providing health services. In my office’s [Investigation Report 008-2017](#) concerning eHealth Saskatchewan, I mentioned at paragraphs [6] to [8] that similar information would constitute registration information pursuant to subsection 2(1)(q) of HIPA, which provides as follows:

2(1) In this Act:

...

(q) “**registration information**” means information about an individual that is collected for the purpose of registering the individual for the provision of health services, and includes the individual’s health services number and any other number assigned to the individual as part of a system of unique identifying numbers that is prescribed in the regulations;

[14] I disagree with Health, then, that the columns containing the initials, sex and age are personal information pursuant to subsection 29(1) of FOIP, and instead consider these columns to contain registration information pursuant to subsection 2(1)(q) of HIPA. As such, I find these three columns contain personal health information as defined by subsection 2(1)(m)(v) of HIPA.

[15] Before I review if subsection 27(1) of HIPA applies to the data elements in the spreadsheet, I need to consider if the “personal health information” is associated with an identifiable individual or if it can qualify as “de-identified personal health information”. Subsection 2(1)(d) of HIPA defines “de-identified personal health information” as follows:

2(1) In this Act:

...

(d) “**de-identified personal health information**” means personal health information from which any information that may reasonably be expected to identify an individual has been removed;

[16] Further subsection 3(2)(a) of HIPA states:

3(2) This Act does not apply to:

(a) statistical information or de-identified personal health information that cannot reasonably be expected, either by itself or when combined with other information available to the person who receives it, to enable the subject individuals to be identified;

[17] Given this, the information in the columns containing the initials, sex and age of the individuals, when combined, could reasonably be expected to identify them as having received a health service. Therefore, I find subsection 27(1) of HIPA applies to this information and Health should withhold it pursuant to subsection 27(1) of HIPA.

[18] However, once you de-identify the information by removing the columns containing the initials, sex and age, the remaining columns 7 to 18 as identified at paragraph [10] of this Report would be de-identified personal health information pursuant to subsection 3(2) of HIPA, and so HIPA would no longer apply to it. As such, I find that the columns 7 to 18, being sufficiently de-identified, do not contain identifiable personal health information and recommend Health release the information in these columns to the Applicant within 30 days of the issuance of this Report.

[19] Regarding the “unique identifier” assigned to each adverse event, it does not appear that this number uniquely identifies an individual, or is not unique to a specific individual. Rather, the number appears to describe an event. As the release of this cannot lead to an identifiable individual, I recommend that this column also be released to the Applicant within 30 days of issuance of this Report.

#### **IV FINDINGS**

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

[21] I find that personal health information is involved as defined by subsection 2(1)(m) of HIPA.

[22] I find that subsection 27(1) of HIPA applies to columns 2 to 4, containing the initials, sex and age of individuals.

[23] I find that after withholding columns 2 to 4, the remaining columns 1, 7 to 18 are sufficiently de-identified, so subsection 27(1) of HIPA does not apply.

[24] I find that Health did not properly apply subsection 29(1) of FOIP.

## **V RECOMMENDATIONS**

[25] I recommend that Health withhold columns 2 to 4 of the record pursuant to subsection 27(1) of HIPA.

[26] I recommend that Health release column 1 and columns 7 to 18 of the record to the Applicant within 30 days of issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 17<sup>th</sup> day of October, 2023.

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