



INVESTIGATION REPORT 199-2019

Saskatchewan Government Insurance

July 2, 2020

Summary:

Saskatchewan Government Insurance (SGI) received a complaint in which the Complainant alleged they were required to produce their health card in order to renew their driver's licence. The Complainant felt they should not have to produce their health services number (HSN) to the motor licence issuer (Issuer) and submitted a complaint to the Commissioner. The Commissioner found that: 1) personal health information is involved and that *The Health Information Protection Act* (HIPA) is engaged; 2) a collection pursuant to HIPA occurred when the Issuer viewed the Complainant's health card which contains the HSN; and 3) pursuant to section 11 of HIPA, no person, including SGI, shall require an individual to produce a HSN as a condition of receiving a product or service, other than for a health service, unless otherwise authorized to do so by an Act or regulation. Although the Commissioner found that no authority existed to require the production of the HSN in this case, he recommend that SGI do more to ensure that the Issuer, along with all others and customers, are aware that producing a health card to verify signature or identity is voluntary, and if a health card is produced, that SGI continues its present practice of just viewing it.

I BACKGROUND

[1] On February 25, 2019, Saskatchewan Government Insurance (SGI) received a complaint regarding an apparent request by a motor licence issuer (Issuer) for the Complainant to provide their health card to confirm their identity. The Complainant stated the following in a letter dated January 10, 2019 to SGI:

While renewing my licence at [the Issuer] in [name of community] they informed me SGI blocked my account and required me to prove my identity. **When I asked what identification was required they said a health card. When I told them it was a violation of law to require a health card they were unable to articulate any alternative acceptable identification.**

[Emphasis added]

- [2] On April 1, 2019, the Complainant asked my office to investigate the matter.
- [3] On July 30, 2019, my office notified both SGI and the Complainant of my office's intention to undertake an investigation.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction to conduct this investigation?

- [4] For the purposes of establishing jurisdiction, it is necessary to clarify the nature of the relationship between SGI and the Issuer.
- [5] SGI stated that as administrator of *The Traffic Safety Act* (TSA), it “may delegate some of its powers to other entities and impose terms and conditions on the exercise of those powers”. SGI stated that the motor licence issuer (the Issuer) is a “private entity that does not provide health services and does not qualify as a “trustee” under *The Health Information Protection Act*” (HIPA). I note, however, that section 11 of HIPA states that an individual has a **right to refuse** to produce their health services number (HSN) to any person other than to a trustee who is providing a health service, as a condition of receiving a service unless the production is otherwise authorized by an Act or regulation.
- [6] As for the relationship between the Issuer and SGI, as SGI has noted, the Issuer is delegated by SGI to provide certain services that SGI is mandated to provide. In this particular case, SGI advised that, “the Issuer, acting under the authority of SGI’s delegated powers under *The Traffic Safety Act*, verified the Complainant’s identity in accordance with SGI’s policies.”

- [7] SGI also acknowledged it was SGI’s call centre that advised the Issuer to seek additional identification from the Complainant. That is, it appears the call centre had placed the requirement to obtain the additional identification on the Complainant’s file prior to allowing the Issuer to renew the Complainant’s driver’s licence. Ultimately, the decision to renew a driver’s licence rests with SGI.
- [8] Further to this, SGI added that, “SGI’s SAM Integrated Help Manual (“Manual”) contains SGI’s procedures for customer verification. The Manual is available to and followed by SGI issuers.”
- [9] I am satisfied that in this matter, the Issuer did not act on its own accord in seeking additional identification from the Complainant, and that it does not determine which policies and procedures it follows. My analysis, therefore, will focus on SGI’s requirements for verifying identification and not necessarily on the actions of the Issuer, although the Issuer does bear some responsibility.
- [10] With respect to jurisdiction, SGI is a “government institution” as defined at subsection 2(1)(d)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [11] SGI also qualifies as a trustee pursuant to subsection 2(t)(i) of HIPA, which provides that government institutions are trustees.
- [12] I have jurisdiction to conduct this investigation.

2. Is personal health information involved?

- [13] With respect to whether a person’s HSN is personal health information, HIPA provides:

2 In this Act

...
(m) “**personal health information**” means, with respect to an individual, whether living or deceased:

...
(v) registration information;

...

(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;

[Emphasis added]

[14] As an individual’s HSN is considered registration information, it is also personal health information. I find that personal health information is involved and HIPA is engaged.

3. Is SGI able to rely on HIPA to collect personal health information to confirm identity?

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

On January 7, 2019, [the Complainant] attending [sic] an issuing office in [community] to perform a transaction. Because of the special request on [their] Auto Fund File, [they] were required to prove [their] identity. The issuer called SGI’s Call Centre and was advised that [they] would have to present a birth certificate as a primary piece of identification, as well as a secondary piece of ID such as a health card (which also included a signature. [Complainant] stated that SGI was not legally allowed to ask for a health card as ID. On a second visit to the issuer, [the Complainant] ultimately presented the document from Vital Statistics showing [their] name change, as well as [their] birth certificate and [their] health card.

[16] In addition, SGI stated that the Issuer did not retain a copy of the Complainant’s HSN or record it in its system; rather, SGI stated, “a note was made indicating [they] had presented them, but that was all”. So, did a collection of personal health information occur?

[17] With respect to “collection”, SGI put forth the following argument:

The individual components of HIPA’s definition of “collect” are: gather, acquire, receive, obtain, and obtain access to. Applying the first step of statutory interpretation, the plain meaning of these component parts are as follows. From the *Oxford English Dictionary*, the term “gather” is defined as “bring or come together; assemble, accumulate” as well as to “acquire by gradually collecting; amass”. The term “acquire” is defined as “gain by and for oneself; obtain”, while “receive” means to “take or accept (something offered or given) into one’s hands or possession” or else to “acquire; be provided with or given”. Additionally, “obtain” is defined as to “acquire, secure; have granted to one” and “obtain access to” furthers that definition by meaning to “access - right or opportunity to use (has access to secret files) or “computing-gain

access to (data, a file, etc.).” These definitions demonstrate that embodied within the meaning of “collect” as used in HIPA is the concept of taking possession of or accumulating information with a corresponding power to administer, organize, manipulate or manage said information. In other words, one does not “collect” PHI [personal health information] without a purpose for doing so.

- [18] My office has taken the position that viewing personal health information is a “collection” for the purposes of HIPA. In Investigation Report 282-2016, for example, my office reviewed a matter whereby a physician viewed non-patient personal health information on the Pharmaceutical Information Program (PIP). In that report, my office concluded that when a trustee enters PIP to view information, the Ministry of Health is disclosing the personal health information, and the individual viewing it is collecting it. What if a trustee does not record the personal health information it views?
- [19] Other jurisdictions have considered collection with a mind towards whether or not it requires that the information in question be recorded. In Investigation Report No. PP-20-001, Prince Edward Island’s Information and Privacy Commissioner (PEI IPC) undertook an investigation of a cannabis seller’s practice of scanning customer ID cards. At paragraph [33], the PEI IPC stated the following regarding the practice of viewing personal information to verify a customer’s age:

It has been held that viewing, without recording, an individual’s driver’s licence is a collection of personal information [see BC Order P10-01, Re: Host International of Canada Ltd, 2010 BCIPC 7 (CanLII), at paragraph 6, and AB Order H2007-002, Drugstore Pharmacy, Real Canadian Superstore, 2008 CanLII 88797, at paragraphs 50, 67, 74, and 92]. The Public Body inspects an individual’s identification for the purposes of confirming the individual is at least 19 years of age. I find that collecting this personal information is directly related to and necessary to confirm that individuals purchasing cannabis are over the age of 19, and that the Public Body’s collection of this personal information is authorized under subsection 31(c) of the FOIPP Act.

[Emphasis added]

- [20] Similar to the PEI case, when SGI or an Issuer views a health card, it is doing so to confirm something about the individual – in this case, according to SGI, the purpose is to verify their signature, not to provide a health service. An Issuer would arguably first have to inspect the health card to confirm it is the correct piece of government-issued ID, before inspecting the signature. In other words, the Issuer would be obtaining access to the

customer's health card and, upon viewing it, would be obtaining the personal health information from it. This would fit with HIPA's definition of collection found at subsection 2(b), which provides:

2 In this Act:

...

(b) "collect" means to gather, obtain access to, acquire, receive or obtain personal health information from any source by any means;

[21] Further, Alberta's Information and Privacy Commissioner (AB IPC) in Order H2007-002, considered if under Alberta's *Health Information Act* (HIA), information that is not recorded can be considered "collected". The AB IPC stated the following at paragraphs [72], [89] and [90] of that order:

[para 72] **The information that falls within the definition of "personal health information" in the more recent legislation in Saskatchewan and Ontario is not limited to recorded information. Similarly, the meaning of "collect" under these statutes is not limited to recorded information.** In my view, the evolving legislative norms evident in the privacy legislation as well as in the health privacy legislation show a trend towards a broader scope that includes unrecorded information. Additionally, the evolving legal norms indicate that **"collected" is not the same thing as "recorded"**.

...

[para 89] The vast majority of the information that is eventually recorded as "health information" originates in unrecorded form. Information recorded in laboratory and diagnostic imaging reports and in pharmacy, physician and hospital records is largely derived from information in unrecorded form such as genetic information and biosamples.

[para 90] **If information in unrecorded form cannot be "collect(ed)" under HIA, then much of the information that currently exists in health records could never be collected to go on to become "health information"**. If information in unrecorded form cannot be collected under HIA then information provided verbally, such as an individual's name, could not be collected and subsequently recorded.

[Emphasis added]

[22] In the news release, *Collection of Driver's Licence Numbers Under Private Sector Privacy Legislation* (December 8, 2008), the AB IPC summed up the notion that collection of driver's licence information can mean: 1) examining the driver's licence; 2) recording information from it, such as the driver's licence number; and 3) photocopying or "swiping"

the licence. It acknowledged that each of these forms of collection are not equal or interchangeable, but that they represented a different extent of collection with its own inherent privacy challenges.

[23] Certainly, as demonstrated, collection does not require that the information be recorded immediately or within a certain period of time. It is conceivable that one can view or hear any matter of information throughout the day and later recall it, and move to record it. Although there may be a difference between recording a HSN versus simply looking at it, it does not mean in this matter that, pursuant to HIPA, the Issuer did not collect the Complainant's personal health information for SGI's purposes. I find, therefore, that based on the aforementioned, a collection pursuant to HIPA occurred when the Issuer viewed the Complainant's health card.

[24] With this in mind, I turn my attention towards SGI's authority to collect personal health information, as part of its policies, to verify a signature. SGI stated that section 40.1 of TSA provides it with the authority to "deny transactions if they are unable to confirm an individual's identity." Subsections 40.1(5)(a)(b) of the TSA provides:

40.1 (5) Notwithstanding any other provision of this Act or the regulations, the administrator may refuse to issue, renew, cancel or suspend a person's driver's licence, photo identification card, certificate of registration or registration permit until that person can establish his or her identity to the satisfaction of the administrator if the administrator:

(a) is unable to confirm or establish the identity of the person; or

(b) has reasonable grounds to believe that the person has represented himself or herself as another person.

[25] Also at issue in this investigation is the application of section 11 of HIPA, which provides as follows:

11(1) An individual has the right to refuse to produce his or her health services number or any other prescribed identifying number to any person, other than a trustee who is providing a health service, as a condition of receiving a service.

(2) Except as provided in subsection (3), no person shall require an individual to produce a health services number as a condition of receiving any product or service.

- (3) A person may require the production of another person’s health services number:
- (a) for purposes related to:
 - (i) the provision of publicly funded health services to the other person;
 - (ii) the provision of a health service or program by a trustee; or
 - (b) where authorized to do so by an Act or regulation.

[26] With respect to section 11 of HIPA, SGI stated the following:

Section 11 is designed to address situations in which an individual is asked to voluntarily show their Health [sic] Card for the purpose of receiving a product or service (other than a health service), in contrast to the mandatory “collection” of “registration information” by a “trustee” is for the purpose of providing a health service. Section 11 is directly relevant to the current situation and, in SGI’s view, governs the situation at hand. In the situation at hand, the customer was asked to “produce” their Health Services Card for the purpose of verifying identity and renewing [their] driver’s licence (a product) – this was not a “collection” by a “trustee” in relation to a health service. Section 11 demonstrates that HIPA distinguishes between these two activities. If there was no difference between (1) *producing* a Health Card for the purpose of identification and receiving a product versus (2) the *collection* of health information by a “trustee”, there would be no need for section 11. Section 11 is meant to address entities, other than trustees, who request production of a health card. While SGI is a trustee for some purposes under HIPA, it is not cloaked with this status when issuers request identification for the purpose of completing a driver’s licence transaction.

SGI’s position is supported by the plain and ordinary meaning of “produce”. The Oxford English Dictionary defines “produce” as follows: “bring forward for consideration, inspection or use”. This meaning is distinguished from “collect”, which carries with it the element of taking information into one’s possession and being able to exert control over that information.

[27] With respect to SGI’s ability to collect a person’s HSN, I note that the TSA does not exempt SGI from any provision of HIPA. Further, subsection 40.1(5) of the TSA does not explicitly *require* the production of the HSN to verify a signature or identity, so subsection 11(3)(b) of HIPA would not authorize the collection. Concerning SGI’s assertions regarding section 11 of HIPA and trustees, I note that the purpose of section 11 of HIPA is to allow an individual the **right to refuse** to produce their HSN for a purpose other than a health service unless production is otherwise authorized by an Act or regulation. I find, therefore, pursuant to section 11 of HIPA, no person, including SGI, shall require an

individual to produce a HSN as a condition of receiving a product or service, other than for a health service, unless otherwise authorized to do so by an Act or regulation.

[28] With respect to the question of voluntary production, as I quoted at paragraph [1], the Complainant alleged that the Issuer did not provide them with options to confirm their signature or identity other than through their health card. Further, in SGI's own submission, it stated that, "[i]n the situation at hand, the customer was asked to "produce" their Health Services Card for the purpose of verifying identity and renewing [their] driver's licence..." Based on this, I am of the view that the Issuer did not do enough to explain to the Complainant that producing a health card was voluntary, or gave the Complainant options to verify their signature as outlined in SGI's *Acceptable Documents Verification* (see Appendix for a list of documents Issuers can accept to verify signature). Although it appears that the Complainant felt obligated to produce their health card in order to renew their driver's licence, I nonetheless find that a person can consent to produce their health card to confirm their signature or identity as long as SGI informs them of the purpose for doing so, that it is voluntary and that they have the ability to produce alternatives to their health card. I recommend that SGI do more to ensure that the Issuer, along with all others and customers, are aware that producing a health card to verify signature or identity is voluntary, and if a health card is produced, that SGI continues its present practice of just viewing it.

III FINDINGS

[29] I find that personal health information is involved and HIPA is engaged.

[30] I find that a collection pursuant to HIPA occurred when the Issuer viewed the Complainant's health card.

[31] I find that pursuant to section 11 of HIPA, no person, including SGI, shall require an individual to produce a HSN as a condition of receiving a product or service, other than for a health service, unless otherwise authorized to do so by an Act or regulation.

[32] I find that a person can consent to produce their health card to confirm their signature or identity as long as SGI informs them of the purpose for doing so, that it is voluntary and that they have the ability to produce alternatives to their health card.

IV RECOMMENDATION

[33] I recommend that SGI do more to ensure that the Issuer, along with all others and customers, are aware that producing a health card to verify signature or identity is voluntary, and if a health card is produced, that SGI continues its present practice of just viewing it.

Dated at Regina, in the Province of Saskatchewan, this 2nd day of July, 2020.

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

Appendix

From SGI's document, "Acceptable Identification Documents When Assigning a Customer Number to Individuals" (n.d.), the following are acceptable documents that can be used to verify a signature:

- Driver's Licence (Canadian Jurisdiction) – must be valid/non-expired;
- Passport Canadian – must be valid/non-expired;
- First Time Driver Form (Also known as Signature Form/Guarantor Form for First Time Drivers);
- Saskatchewan Health Card with Signature (valid or expired);
- Canadian Enhanced Driver's Licence (EDL);
- Canadian Enhanced ID (EID);
- Department of National Defense Driving Permit;
- BC Services Card (with or without photo);
- Ontario/Quebec Health Cards;
- Secure Canadian Indian Status Card;
- Canadian Indian Status Card (CSIS);
- Existing Saskatchewan Photo (if the existing photo Sask photo on file. Customer must still have primary piece Birth Certificate or Passport;
- Other (as Approved by Head Office);
- Provincial Government Photo ID Card;
- Passport Foreign;
- Permanent Resident Card (if no signature, see "Permanent Resident Card (without signature)");
- Record of Landing;
- Study Permit;
- Temporary Resident Permit (CIC);
- Visitor Record; and
- Work Permit