



INVESTIGATION REPORT 008-2022, 009-2022

Ministry of Social Services, Street Worker's Advocacy Project

September 6, 2022

Summary: An individual became concerned when they learned that the Executive Director at the Street Worker's Advocacy Project (SWAP) had emailed information about them to Social Services. The Commissioner determined that he did not have jurisdiction to investigate this matter under *The Freedom of Information and Protection of Privacy Act* or *The Health Information Protection Act*. He recommended that the Minister of Justice and Attorney General introduce a law similar to British Columbia's *Personal Information Protection Act* and Alberta's *Personal Information Protection Act*, so that the privacy interest of clients or customers of non-profit organizations are protected.

I BACKGROUND

[1] The Complainant, a former resident at the Raising Hope program that was operated by the Street Worker's Advocacy Project (SWAP), received copies of records from the Ministry of Social Services (Social Services) as a result of an access to information request. Within the records, the Complainant noted an email dated December 11, 2020 by the Executive Director at SWAP to a manager at Social Services. The email contained information about the Complainant. The Complainant became concerned about SWAP's Executive Director disclosing their information to Social Services.

[2] On October 7, 2021, the Complainant submitted a privacy complaint to Social Services. However, the Complainant did not receive a response.

[3] On January 10, 2022, the Complainant submitted a complaint to my office. The Complainant alleged that the Executive Director at SWAP breached their privacy by disclosing their personal health information to Social Services.

[4] On January 24, 2022, my office notified Social Services and the Complainant, as well as SWAP, indicating that my office would be investigating to determine if it has jurisdiction over this matter.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[5] At issue in this alleged breach of privacy matter is the disclosure of the Complainant's information by the Executive Director at SWAP to Social Services in an email dated December 11, 2020.

[6] *The Freedom of Information and Protection of Privacy Act* (FOIP) applies to records in the possession or under the control of government institutions. *The Health Information Protection Act* (HIPA) is engaged when three elements are present: (1) a trustee, (2) personal health information, and (3) the trustee has custody or control over the personal health information.

[7] As established in my office's Investigation Report 210-2021, 211-2021 and Investigation Report 226-2021, 227-2021, SWAP does not qualify as a government institution under FOIP nor a trustee under HIPA; however, Social Services does qualify as a government institution pursuant to section 2(1)(d)(i) of FOIP and as a trustee pursuant to section 2(t)(i) of HIPA. Therefore, I need to determine if Social Services has possession or control over the information at issue.

[8] In my office's Investigation Report 226-2021, 227-2021, our office found that Social Services has control over information that SWAP receives from Social Services for the

purposes of the Raising Hope program. Clause 9.1 of the agreement between Social Services and SWAP for the time period between April 1, 2018 and March 31, 2021 says:

9.1 The Agency acknowledges that in the course of providing the Services, it will require and **receive** documents, data and other information from the Minister, including personal information within the meaning of *The Freedom of Information and Protection of Privacy Act* and/or personal health information within the meaning of *The Health Information Protection Act* (collectively referred to throughout this paragraph as “confidential information”). This confidential information will be included in Records that come into existence as a result of the provision of Services under this Agreement. In that regard, the Agency agrees that it will:

- (a) comply with all retention and disposal requirements for Records as set out in Appendix “F”;
- (b) protect and secure confidential information to ensure that it remains confidential;
- (c) not disclose the confidential information to any third party without the written authorization of the Minister except as may be required to perform the Services or to comply with the terms of Appendix “F”, or as may be authorized or required by law;
- (d) not use or disclose the confidential information for any purpose other than for the provision of the Services under this Agreement;
- (e) promptly return the confidential information to the Minister, if requested;**
- (f) dispose of the confidential information in the manner described in Appendix “F”; and
- (g) provide evidence of secure records disposal practices as described in Appendix “F”, if requested by the Minister.

[Emphasis added]

[9] The information at issue is information sent from SWAP to Social Services. Since clause 9.1 of the agreement between SWAP and Social Services only applies to information received by SWAP from Social Services (and not vice-versa), then the information at issue is not under the control of Social Services.

[10] As such, I find that neither FOIP nor HIPA apply to this issue; therefore, I do not have jurisdiction to investigate this matter.

[11] In my office's Investigation Report 210-2021, 211-2021 and Investigation Report 226-2021, 227-2021, I recommended that Saskatchewan adopt a private sector privacy law similar to British Columbia's (BC) *Personal Information Protection Act* (BC PIPA) and Alberta's *Personal Information Protection Act* (AB PIPA). I make the same recommendation again. This case illustrates that clients or customers of non-profit organizations clearly have privacy interests that should be protected. I recommend that the Minister of Justice and Attorney General introduce a law similar to BC PIPA and AB PIPA.

III FINDING

[12] I find that neither FOIP nor HIPA apply to this issue. Therefore, I do not have jurisdiction to investigate this matter.

IV RECOMMENDATIONS

[13] I recommend that Social Services take no further action.

[14] I recommend that SWAP take no further action.

[15] I recommend that the Minister of Justice and Attorney General introduce a law similar to BC PIPA and AB PIPA.

Dated at Regina, in the Province of Saskatchewan, this 6th day of September, 2022.

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