



## INVESTIGATION REPORT 198-2020

### Saskatchewan Power Corporation

April 22, 2022

#### Summary:

The Complainant, an employee of Saskatchewan Power Corporation (SaskPower), applied for SaskPower's Plan B short-term disability benefits. As part of the application process, SaskPower collected, used, and disclosed the Complainant's personal health information. The Complainant raised many concerns with SaskPower's Chief Privacy Officer, including how she felt SaskPower did not have the authority to collect, use, and/or disclose certain personal health information. The Commissioner found that in some instances, that SaskPower had authority under *The Health Information Protection Act* (HIPA) to collect the Complainant's personal health information, but not in all cases. He also made a number of other findings, including how a privacy breach occurred when SaskPower shared the Complainant's personal health information with the Complainant's manager. The Commissioner made several recommendations, including that SaskPower broaden the consent wording on its P-148 form if it is a regular practice of SaskPower to collect personal health information beyond what is requested on the P-148 form for the purpose of determining eligibility of Plan B short-term disability benefits, and that SaskPower implement policies and procedures so that its employees comply with section 23 of HIPA.

#### I BACKGROUND

- [1] In July of 2018, the Complainant, an employee of Saskatchewan Power Corporation (SaskPower), was experiencing health problems and applied for SaskPower's "Plan B" short-term disability benefits.
- [2] In the course of applying for benefits, the Complainant had many privacy concerns. In a letter dated October 10, 2018, the Complaint outlined seven privacy concerns to SaskPower's Chief Privacy Officer.

[3] In a letter dated April 4, 2019, SaskPower responded to each of her privacy concerns.

[4] Below is a table that outlines the Complainant’s privacy concerns and SaskPower’s response to each:

Privacy Concern #	Complainant’s privacy concern	SaskPower’s response
1	<p>On <b>August 17, 2018</b>, Dr. [Name], the Corporate Physician for SaskPower Health &amp; Wellness Services, sent a letter to my neurologist, Dr. [Name], requesting further information regarding my condition. While the Plan B form I signed did give Dr. [Name] consent to give answers to the questions he asked, one of the questions asked was, “<i>please provide a specific diagnosis resulting in [name of Complainant] bilateral wrist and hand pain</i>”. <b>Under the Saskatchewan Human Rights Code, an employer is not entitled to the diagnosis of an employee, therefore asking this question and obtaining the answer was a violation of my privacy.</b></p>	<p>There was no violation of <i>The Saskatchewan Human Rights Code</i> because the purpose for requesting this information was to ascertain whether the Corporation should continue to administer Plan B benefits. This information was not used to discriminate against the employee continuing to work for SaskPower. <i>The Saskatchewan Human Rights Code</i> does not contemplate/regulate privacy. It forbids discrimination in employment based on enumerated prohibited grounds.</p> <p>No discrimination has taken place.</p>
2	<p>On <b>August 31, 2018</b>, Dr. [Name], the Corporate Physician for SaskPower Health &amp; Wellness Services, sent a letter to my family doctor, Dr. [Name], in which he asked him to forward him copies of my specialist’s report, MRI and ultrasound reports. My doctor ignored this request as he knew Dr. [Name] did not have my consent to obtain any medical information from him. <b>This information should not have been requested as obtaining such information without my consent is a privacy violation.</b></p>	<p>SaskPower’s Corporate Physician did not violate <i>The Health Information Protection Act</i> in requesting the medical assessments noted in the letter because they were necessary for determining whether the employee was eligible for Plan B benefits and continuing disability leave from the workplace as per Section 19, 23, 25(d)(f) [sic] and 27.4(k) [sic].</p> <p>The Complainant’s Physician may have violated <i>The Health Information Protection Act</i> by not informing SaskPower or the Corporate Physician that the Complainant had revoked her consent. This is as per Section 7.3 and it</p>

		would not allow SaskPower to fulfill its obligation under 27.4(b) [sic].
3	<p>On <b>September 6, 2018</b>, Dr. [Name], the Corporate Physician for SaskPower Health &amp; Wellness Services, sent a letter to CBI Health Centre regarding a functional abilities evaluation they set up for me. In this letter Dr. [Name] disclosed <b>ALL</b> of my personal medical information relating to my current absence from work. The letter also states that “Medical Documentation” was enclosed. I provided my medical information to SaskPower so that they could administer Plan B (short-term disability) benefits to me and for no other purpose. <b>Dr. [Name] did not have my permission to disclose my personal medical information to a third party.</b></p>	<p>The Corporate Physician did not violate <i>The Health Information Protection Act</i> by providing the information in the letter or the back-up medical documentation because all parties are considered trustees under Saskatchewan Legislation.</p>
4	<p>On <b>September 17, 2018</b>, [Name] of SaskPower Health &amp; Wellness Services, sent an email to myself as well as to several other people employed by SaskPower (Labour Relations, HR) including my Manager, [Name], which disclosed my personal medical information. <b>I did not consent to the disclosure of my personal medical information to my Manager or to anyone else at SaskPower.</b></p>	<p>The Specialist, Health and Wellness did not violate <i>The Health Information Protection Act</i>.</p> <p>Consent for every single party was not required, nor was consent required before this email was sent out. The signed SaskPower Employee Consent and Authorization Form, the signed Plan B benefits form, and the signed P-148 forms provided the consent required.</p>
5	<p>On <b>September 25, 2018</b>, my Manager, [Name], sent me a letter that stated I was to return to work on September 27, 2018 and in this letter, he included information about my physiotherapy assessment, which was disclosed to him by SaskPower Health &amp; Wellness Services without my permission. [Name] in Labour Relations was cc'd on this letter as well as UNIFOR. <b>I did not consent to the disclosure of my personal medical information to my</b></p>	<p>There was no personal health information within the definition provided in the Saskatchewan legislation. <i>The Health Information Protection Act</i> does not apply to this communication and there was no violation of <i>The Health Information Protection Act</i>.</p>

	<b>Manager or to anyone else at SaskPower.</b>	
6	On <b>September 28, 2018</b> , Dr. [Name], the Corporate Physician for SaskPower Health & Wellness Services, wrote a letter to me which directed me to return to work on October 1, 2018. The letter disclosed my personal medical information as well as my employment related matters to my family doctor, Dr. [Name of family physician], and to my physiotherapist, [Name of physiotherapist]. <b>I did not consent to them sharing my personal medical or employment information with these individuals.</b>	There was no violation of <i>The Health Information Protection Act</i> . There was no Privacy or Code of Conduct violation that occurred regarding the employment details contained in the letter, as it was specifically related to the ceasing of medical benefits, and a requirement for the employee to return to work.
7	[Name] of SaskPower Health & Wellness Services also harassed my physiotherapist, [name], repeatedly, via email and telephone. [Name] urged [name of physiotherapist] to disclose my personal medical information to her that [name of physiotherapist] had obtained through the course of doing my assessment. [name of physiotherapist] refused to provide this information to [Name] as it is not standard practice to disclose an employee's medical information for an assessment and she knew that she did not have my consent to do so. <b>[Name] had no right to my personal medical information and should not have been trying to obtain it from my physiotherapist.</b>	The allegation of harassment of the physiotherapist is hearsay from the Complainant. Internal Audit did not investigate the veracity of the claim of harassment because the person, to whom it was alleged it happened (the physiotherapist), did not make any claim of harassment.  Internal Audit also noted that once Health and Wellness was made aware that the Complainant had withdrawn consent as communicated by her medical practitioner on Sep 14, 2018, Health and Wellness ceased any further requests regarding medical information that they were seeking, except as it related to fulfilling its obligations for the long-term disability insurance program. There was no violation of <i>The Health Information Protection Act</i> .

[5] The Complainant was dissatisfied with SaskPower's response. Therefore, in a letter dated August 4, 2020, the Complainant requested that my office investigate this matter.

[6] On August 27, 2020, my office sent emails to the Complainant and SaskPower's Chief Privacy Officer to notify them that it would be undertaking an investigation. On October

13, 2020, my office discovered that it made an error in typing SaskPower’s Chief Privacy Officer’s email address in the email dated August 27, 2020. Therefore, on October 14, 2020, my office forwarded the notification email to SaskPower’s Chief Privacy Officer.

## II DISCUSSION OF THE ISSUES

### 1. Do I have jurisdiction?

#### a. *The Health Information Protection Act (HIPA)*

[7] HIPA is engaged when three elements are present: (1) personal health information, (2) a trustee, (3) the personal health information is in the custody or under the control of the trustee.

[8] First, I must determine if personal health information is present. As described in the background, the Complainant has concerns about the collection, use, and disclosure of information by SaskPower about her health. Section 2(m)(i) of HIPA provides:

#### 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;

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

[9] Based on section 2(m)(i) and (ii) of HIPA, I find that most of the information at issue in this case qualifies as personal health information.

[10] Second, I must determine if a trustee is present. Section 2(t)(i) of HIPA provides:

#### 2 In this Act:

...  
(t) **“trustee”** means any of the following that have custody or control of personal health information:

(i) a government institution;

[11] I find that SaskPower qualifies as a trustee as defined by section 2(t)(i) of HIPA.

[12] Third, I must determine whether SaskPower has custody or control over the personal health information. As detailed in the Complainant's privacy concerns 3 and 4, it appears as though the Complainant's personal health information originates from an employee at SaskPower to another. Therefore, I find that SaskPower has custody or control over the Complainant's personal health information.

[13] All three elements are present in order for HIPA to be engaged. Therefore, I find that I have jurisdiction to investigate this matter under HIPA.

**b. *The Freedom of Information and Protection of Privacy Act (FOIP)***

[14] SaskPower qualifies as a "government institution" as defined by section 2(1)(d)(ii) of FOIP and section 3 and Part I of the Appendix of the FOIP Regulations. While most of the Complainant's concerns are about her personal health information, privacy concern 6 is regarding her employment information being disclosed by SaskPower. Section 24(1)(b) of FOIP provides:

**24(1)** Subject to subsections (1.1) and (2), "**personal information**" means personal information about an identifiable individual that is recorded in any form, and includes:

...

(b) information that relates to the education or the criminal or **employment history of the individual** or information relating to financial transactions in which the individual has been involved;

[Emphasis added]

[15] Therefore, FOIP is engaged. I find that I have jurisdiction to investigate this matter under FOIP.

**2. Did privacy breaches occur?**

[16] A privacy breach occurs when personal health information is collected, used, and/or disclosed without authority under HIPA. Similarly, a privacy breach occurs when personal information is collected, used, and/or disclosed without authority under FOIP.

[17] I have grouped the Complainant's privacy concerns based on themes. Each group is as follows:

- Complainant's concerns over SaskPower's attempts to collect her personal health information – Privacy Concerns 1, 2, and 7.
- The Complainant's concerns over the "use" of her personal health information – Privacy Concerns 4 and 5.
- The Complainant's concern over SaskPower's disclosure of her personal health information – Privacy Concerns 3 and 6.
- The Complainant's concern over SaskPower's disclosure of her personal information – Privacy Concern 6.

[18] I will analyze each group of concerns below.

**a. Complainant's concerns over SaskPower's attempts to collect her personal health information – Privacy Concerns 1, 2, and 7**

[19] Section 2(b) of HIPA defines "collection" as follows:

**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;

**i. Privacy Concern 1**

[20] In Privacy Concern 1, the Complainant took issue with SaskPower's letter dated August 17, 2018, to her neurologist. Specifically, SaskPower requested from her neurologist the "specific diagnosis" that resulted in the Complainant's symptoms. The letter contained a

blank space for the neurologist to fill-in. The letter itself explained it required such information in order for SaskPower to determine the Complainant's eligibility for ongoing short-term disability benefits and "to support her inability to work in any capacity". It should be noted that the Complainant's physician responded to SaskPower's inquiry by writing "unknown cause" into the blank space.

[21] Section 24 of HIPA sets out the circumstances in which a trustee is able to collect personal health information. Specifically, section 24(4) of HIPA provides:

**24(4)** A trustee may collect personal health information for any purpose with the consent of the subject individual.

[22] Since the Complainant is an employee of SaskPower, I must consider section 26(3) of HIPA, which provides:

**26(3)** Nothing in subsection (2) authorizes a trustee as an employer to use or **obtain access to** the personal health information of an individual who is an employee or prospective employee **for any purpose related to the employment** of the individual without the individual's consent.

[Emphasis added]

[23] *Black's Law Dictionary* (St. Paul, Minnesota, West Corp., 11<sup>th</sup> ed., 2019) defines "employment" as "the act of employing" and "the quality, state, or condition of being employed".

[24] I note that section 25(1) of *The Crown Corporations Act, 1993* provides:

**25(1)** Notwithstanding *The Public Service Act, 1998*, every Crown corporation and every designated subsidiary Crown corporation may:

(a) employ any officers and other employees that it considers necessary to meet its objects and purposes or to exercise its powers; and

(b) determine their respective duties and powers, their conditions of employment and their remuneration.

[25] Further, section 26(1) of *The Crown Corporations Act, 1993* provides:



**26(1)** Every Crown corporation and every designated subsidiary Crown corporation may establish and support any of the following plans for the benefit of any officers and employees of the Crown corporation or designated subsidiary Crown corporation and the dependants of those officers and employees:

- (a) a superannuation plan;
- (b) a group insurance program;
- (c) any other pension, superannuation or **employee benefit program**.

[Emphasis added]

[26] I am satisfied that the “Plan B” short-term disability benefits program is related to the employment of the Complainant. As such, SaskPower would require the Complainant’s consent “to use or obtain access to” the Complainant’s personal health information as it relates to the employment of the Complainant.

[27] SaskPower provided my office with copies of consent forms that had been signed by the Complainant. I note the following signed consent forms:

- Plan B form signed and dated by the Complainant on July 24, 2018. The consent form reads:

I authorize my healthcare or rehabilitation provider to disclose my personal information, including my medical and health information to SaskPower for the purpose of investigating and assessing my claim, administering coverage(s) I may have with SaskPower and administering the services provided.

I note that the Complainant’s neurologist filled out the remainder of the Plan B form, signed, and dated it July 24, 2018.

- Plan B form signed and dated by the Complainant on August 14, 2018. The consent portion of the form read identical to the Plan B form signed and dated July 24, 2018 (quoted above). The remainder of this Plan B form was filled out, signed, and dated August 14, 2018 by the Complainant’s neurologist.

[28] I find that the Plan B forms signed and dated July 24, 2018 and August 14, 2018 by the Complainant provided SaskPower the authority to collect the Complainant’s personal health information pursuant to section 24(4) and 26(3) of HIPA.

- [29] In its resource [\*A Guide to Managing the Return to Work\*](#), the Canadian Human Rights Commission (CHRC) provides that employers must have consent to collect information about any employee, but that the employers must manage information on a need-to-know basis:

As a supervisor, you have a duty to make informed decisions on accommodation. In order to do this, you need to gather adequate information about the employee's situation, and abide by privacy and human rights laws while doing so.

If you feel you don't know enough about the employee's situation, you need their consent to retrieve additional information. If the employee refuses to cooperate, explain to them that you cannot properly assess their needs and cannot proceed with the accommodation process until you get this information.

It's important to ensure that the employee knows that this information will only be used to determine appropriate accommodation measures. **You should also explain that the organization has standard procedures to make certain that the employee's medical information is kept confidential and shared only on a need-to-know basis.**

[Emphasis added]

- [30] CHRC's resource is consistent with HIPA requirements. Even though SaskPower had the employee's consent, section 23 of HIPA requires that the collection, use or disclosure of personal health information on a need-to-know basis:

**23(1)** A trustee **shall** collect, use or disclose only the personal health information that is reasonably necessary for the purpose for which it is being collected, used or disclosed.

(2) A trustee must establish policies and procedures to restrict access by the trustee's employees to an individual's personal health information that is not required by the employee to carry out the purpose for which the information was collected or to carry out a purpose authorized pursuant to this Act.

[Emphasis added]

- [31] Therefore, trustees (such as SaskPower) must only collect, use, and/or disclose personal health information in accordance with the need-to-know principle and data minimization principle, both of which underlie section 23 of HIPA. The need-to-know principle requires a trustee to collect, use, and/or disclose personal health information on a need-to-know

basis. This means that personal health information should only be available to those that have a legitimate need-to-know the information for the purpose of delivering mandated services. Data minimization requires trustees to collect, use, and/or disclose the least amount of personal health information necessary for the purpose.

- [32] In my office's [Investigation Report 115-2013](#), I discussed a situation involving a local authority collecting the personal information of an employee for the purpose of sick leave. I said that while it is appropriate for the local authority to collect certain types of information (such as the prognosis for recovery and the return to regular work), it had not demonstrated why it required other types of information such as the nature of illness. I stated:

However, SPL must collect information in accordance with the data minimization rule. Many of the questions, including the question on the prognosis for recovery and return to regular work, are appropriate. Such information would enable SPL to plan for how long the Complainant may be absent. However, SPL did not show my office why it would need to know the nature of the Complainant's illness or if the Complainant is "receiving the care and support she needs" for the purposes of sick leave. There may be circumstances in which understanding the nature of an illness may be appropriate, but SPL has not demonstrated why this information is appropriate in this case.

- [33] Requesting information about an employee's health is highly invasive especially in the context of an employer-employee relationship. Therefore, employers must take care to collect only what is necessary in accordance with the data minimization principle set out in section 23 of HIPA.

- [34] In the arbitration decision [Saskatchewan Telecommunications v Unifor, Locals 1s](#), 2014 CanLII 37938 (SK LA), Arbitrator Daniel Ish, Q.C. spoke of a continuum where the greater the length of an absence, the greater right an employer has to medical information. He noted that at the initial claim for sick leave, it would be inappropriate for an employer to request information about diagnosis. He said:

[102] After reviewing the ten questions and in light of the arbitral jurisprudence in this area, it is my view that Ms. Warner's position is correct. It is very difficult to determine out of context whether certain questions are appropriate or not, although certain extreme questions may be inappropriate in any context. In the present case, the parties

themselves agreed on a list of appropriate questions. The arbitral jurisprudence is clear, as stated in the *Pelton* award and in other decisions, that the greater length of an absence the greater right an Employer has to medical information. One can view it as a continuum moving from information required on an initial absence to information required with respect to a lengthy absence, possibly involving duties to accommodate. **As an example, it is virtually always inappropriate for an Employer to seek a diagnosis from an employee on the initial claim for sick leave benefits. However, more than one arbitrator has indicated that in certain cases, particularly where infectious and communicable diseases may be involved, an Employer may be entitled to a diagnosis.** (The *Pelton* award discussed this at paragraph 109). Also in *Five Hills Regional Health Authority and S.E.I.U., Local 299 (January 23, 2009, unreported)* Arbitrator Denysiuk acknowledged at paragraph 149 that:

An employee might even be obliged to disclose a diagnosis. However, this would be an exception to the general rule which is to minimize intrusion.

[Emphasis added]

[35] Furthermore, in *Hamilton Health Sciences v. Ontario Nurses' Association*, 2007 CanLII 73923 (ON LA), Arbitrator G. T. Surdykowski said that an employer does not have a “prima facie right” to an employee’s diagnosis. The arbitrator said that where a physician “certifies” that an employee is unable to work for a specific period of time, such certification is sufficient to qualify the employee for sick leave. If the employer required more information, the employer would need to demonstrate a legitimate need for specific information:

27. The several layers of legitimate employer interests suggest that there is more than one stage to the process that is engaged when an employee seeks the benefit of the sick leave provisions in a collective agreement. It also suggests that the employer will generally be entitled to less information at the initial stage than at a subsequent stage. The employer’s desire for more information, or its genuine concern for an employee’s well-being or desire to assist the employee, do not trump the employee’s privacy rights. Nor do questions of expediency or efficiency. In the absence of a collective agreement provision or legislation that provides otherwise the employer is entitled to know only that the employee is unable to work because she is ill or injured, the expected return to work date, and what work the employee can or cannot do. **A document in which a qualified medical doctor certifies that an employee is away from and unable to work for a specified period due to illness or injury is prima facie proof sufficient to justify the absence. Unless the collective agreement (or less likely, legislation) stipulates otherwise, it will also be sufficient to qualify the employee for any applicable sick benefits for that period. To require more invites an unnecessary invasion of the employee’s privacy. In order to obtain additional confidential medical information, the employer must demonstrate a legitimate need for**

**specific information on an individual case-by-case basis. That is, for sick benefits purposes an employer has no prima facie right to an employee's general medical history, a diagnosis, a treatment plan, or a prognosis other than the expected date that the employee will be able to return to work with or without restrictions.**

[Emphasis added]

[36] Therefore, in order for SaskPower to demonstrate it was requesting the Complainant's "specific diagnosis" in accordance with the data minimization principle set out in section 23 of HIPA, it would need to explain why it had a legitimate need for such information.

[37] In both SaskPower's letter dated April 4, 2019, and in its submission to my office, SaskPower did not explain how it had a legitimate need-to-know the employee's diagnosis for the purpose of administering SaskPower's Plan B short-term disability benefits. SaskPower merely asserted that the diagnosis information "was not being used to discriminate against the employee continuing to work for SaskPower". I find that such an assertion does not demonstrate SaskPower was collecting diagnosis information in accordance with section 23 of HIPA.

[38] I find that SaskPower has not demonstrated it requested such personal health information in accordance with section 23 of HIPA. However, since the neurologist did not reveal a diagnosis, I find that no privacy breach occurred.

[39] However, I recommend that SaskPower amend its policies and/or procedures so that it does not request information about an employee's diagnosis unless it can demonstrate it has a legitimate need-to-know such information pursuant to section 23 of HIPA.

## **ii. Privacy Concern 2**

[40] In Privacy Concern 2, the Complainant took issue with how SaskPower's Corporate Physician requested that the Complainant's family physician forward a report by a rheumatologist, copies of a magnetic resonance imaging (MRI), and ultrasound reports in a letter dated August 31, 2018. The Complainant explained that her family physician did

not comply with the request because she had not provided her consent for SaskPower to obtain personal health information from her family physician.

[41] In its letter dated April 4, 2019 to the Complainant, SaskPower provided a two-pronged response. First, it explained that sections 19, 23, “25(d)(f)”, and “27.4(k)” of HIPA authorized the request. It said such information was necessary for determining the Complainant’s eligibility for Plan B benefits and continuing the disability leave. It also asserted that the Complainant’s physician may have violated HIPA for not informing SaskPower that the Complainant had “revoked” her consent.

[42] In its submission, SaskPower provided the same explanation to my office as it did to the Complainant.

[43] As I have already said earlier, SaskPower must have the consent of the employee to collect personal health information for any purpose related to the employment of the individual pursuant to section 26(3) of HIPA.

[44] Based on documentation provided to my office by SaskPower, the following appeared to have occurred:

- The Complainant signed the consent portion of a P-148 form and dated it August 27, 2018. The consent was as follows:

I authorize and request Dr. [Name of family physician] to release **this SaskPower Practitioner’s Report Form (P-148)** to the SaskPower Health & Wellness Services.

[Emphasis added]

- Dr. [Name of family physician] filled out the remainder of the P-148 form with information (including return-to-work information) and then signed and dated it August 27, 2018.
- In a letter dated August 31, 2018 to Dr. [Name of family physician], SaskPower thanked him for completing the P-148 form. Then, SaskPower requested that Dr. [Name of family physician] forward a specialist’s report with copies of a MRI and ultrasound reports.

- Contrary to the Complainant's understanding, it appears that Dr. [Name of family physician] responded by forwarding the specialist's report and ultrasound reports, which was received by SaskPower on September 4, 2018.

[45] In the course of this investigation, SaskPower explained that in order to apply for Plan B short-term disability benefits, an employee must fill out the P-148 form. The wording of the consent on the P-148 form is quite narrow as it relates to only the disclosure of information requested by SaskPower on the P-148 form. It does not appear as though the Complainant consented to the disclosure of any additional information beyond what was requested on the form. Section 26(3) of HIPA requires that SaskPower must have consent "to obtain access" to personal health information of an employee's personal health information for any purpose related to employment. As such, I find that the P-148 form signed and dated by the Complainant on August 27, 2018 provided SaskPower the authority to collect only the Complainant's personal health information that was recorded on the form by Dr. [Name of family physician] pursuant to sections 24(4) and 26(3) of HIPA. However, I find that SaskPower has not demonstrated it had authority to collect the Complainant's personal health information as requested in its letter dated August 31, 2018 to the Complainant's physician. Therefore, I find that a privacy breach occurred when SaskPower collected the Complainant's personal health information that was sought in its August 31, 2018 letter to the Complainant's family physician.

[46] If it is a regular practice for SaskPower to collect information beyond what is requested in its P-148 form, then I recommend that SaskPower broaden and clarify the consent wording in its form. The wording should clarify that SaskPower may request additional information from an employee's physician for the purpose of processing the employee's claim for benefits.

### iii. Privacy Concern 7

[47] In Privacy Concern 7, the Complainant indicated that a Health and Wellness Specialist at SaskPower “harassed” her physiotherapist via email and telephone to disclose her personal health information.

[48] In its letter dated April 4, 2019 to the Complainant, SaskPower indicated it, “did not investigate the veracity of the claim of harassment because the person, to whom it was alleged it happened (the physiotherapist), did not make any claim of harassment”.

[49] SaskPower did not provide my office with any further information in its submission regarding this matter.

[50] My office reviewed an email chain provided by the Complainant. Within the email chain is an email dated September 14, 2018 written by the Complainant’s physiotherapist to the Health and Wellness Specialist at SaskPower. The physiotherapists’ email read as follows:

Hello,

The patient has not provided consent to share any medical information with you. If there is any pertinent return to work information, I will contact you. I cannot answer any questions regarding the patient until further notice. Questions can be directed to the patient.

[51] The above email suggests that SaskPower’s Health and Wellness Specialist had sought information from the Complainant’s physiotherapist and the physiotherapist refused. It is not entirely clear how SaskPower’s Health and Wellness Specialist sought information from the physiotherapist – whether by email, letter, or by telephone. However, since the Complainant’s physiotherapist did not release the Complainant’s medical information in response to SaskPower’s request, I find that a privacy breach did not occur.

[52] I recommend that SaskPower identify its authority under HIPA to collect an employee’s personal health information from a third party (in this case, the physiotherapist). If SaskPower is relying on an employee’s consent for the collection, it should provide a copy



of the consent to the third party. Such information will enable the third party (in this case, the physiotherapist) to determine if they have authority to disclose personal health information.

**b. Complainant’s concerns over SaskPower’s use of her personal health information – Privacy Concerns 4 and 5**

[53] Section 2(u) of HIPA defines “use” as follows:

**2** In this Act:

...

(u) “**use**” includes reference to or manipulation of personal health information by the trustee that has custody or control of the information, but does not include disclosure to another person or trustee.

**i. Privacy Concern 4**

[54] As detailed in the background of this Investigation Report, Privacy Concern 4 is about SaskPower’s Health and Wellness Specialist sending an email dated September 17, 2018 to the Complainant. The email carbon copied several SaskPower employees, including the Complainant’s manager. Such sharing of personal health information would qualify as a “use” of personal health information.

[55] Within the email dated September 17, 2018, SaskPower’s Health and Wellness Specialist describes a physiotherapy assessment that the Complainant was to attend and the type of information she (the Complainant) was to provide to SaskPower. Furthermore, the email attached the email dated September 14, 2018 by the Complainant’s physiotherapist, which was described earlier. I find that such information qualifies as personal health information as defined by section 2(m)(ii) of HIPA.

[56] In its letter dated April 4, 2019 to the Complainant as well as in its submission to my office, SaskPower asserted that the Complainant had provided consent. As mentioned earlier, SaskPower provided my office with copies of Plan B forms and P-148 form signed by the Complainant. Based on a review, my office did not locate a form where the Complainant

authorized SaskPower to share her personal health information with her manager. Therefore, I find that a privacy breach occurred when SaskPower's Health and Wellness Specialist carbon copied the Complainant's manager in the email dated September 17, 2018.

**ii. Privacy Concern 5**

[57] After being carbon copied on the email dated September 17, 2018, the Complainant's manager wrote a letter dated September 25, 2018, to the Complainant. The manager references the September 17, 2018 email by indicating that SaskPower had not received the information it sought from the Complainant. The letter carbon copied personnel from the Labour Relations department at SaskPower as well as the Complainant's union. The Complainant asserted her personal health information was contained within the letter and she had not consented to her manager having her personal health information.

[58] As I have described earlier, a privacy breach occurs when personal health information is collected, used, and/or disclosed without authority under HIPA. Based on a review of the letter dated September 25, 2018, I find that the contents of the letter does not contain personal health information as defined by section 2(m) of HIPA. Therefore, without personal health information, a privacy breach under HIPA could not have occurred. I find a privacy breach did not occur when the Complainant's manager carbon copied his letter dated September 25, 2018, to personnel within the Labour Relations Department as SaskPower and the Complainant's union.

**c. Complainant's concerns over SaskPower's disclosure of her personal health information – Privacy Concerns 3 and 6**

[59] HIPA does not provide a definition of the term "disclosure". However, my office has said that "disclosure" is the exposure of personal health information to a separate entity, not a division or branch of the trustee organization that has custody or control of that information ([Investigation Report 345-2019](#) at paragraph [17]).

[60] Section 27(1) of HIPA provides that a trustee may disclose personal health information with the consent of the individual. Where the trustee does not have consent, it must have authority for the disclosure under sections 27(2), (3), (4), (5), (6), 28 or 29 of HIPA.

**i. Privacy Concern 3**

[61] As described in the background of this Investigation Report, Privacy Concern 3 is about SaskPower's Corporate Physician sending a letter dated September 6, 2018 to CBI Health that enclosed medical documentation about the Complainant. In the letter, SaskPower indicated that the purpose of disclosing such information for the dual purpose of return-to-work and to approve ongoing short-term disability benefits.

[62] The Complainant asserted that SaskPower's Corporate Physician did not have consent to disclose her personal health information to CBI Health.

[63] In its letter dated April 4, 2019 to the Complainant as well as in its submission to my office, SaskPower indicated that HIPA was not violated because "all parties are considered trustees under Saskatchewan Legislation [sic]". I note that there is no provision within HIPA that enables the disclosure of personal health information to another party simply because the other party is a "trustee" under HIPA. Further, as I found in my office's [Investigation Report 292-2016](#) at paragraph [11], CBI Health does not qualify as a trustee as defined by section 2(t) of HIPA.

[64] Based on a review of the letter dated September 6, 2018 to CBI, I find that there are three pieces of information about the Complainant. They are:

**First piece of information:** Dr. [Name] indicating that the cause of the Complainant's symptoms was "unknown" on August 24, 2018 (handwritten into blank spaces on a letter dated August 17, 2018 by SaskPower to Dr. [Name]) (as discussed in Privacy Concern 1).

**Second piece of information:** The Complainant's personal health information provided on a P-148 form filled out and signed by Dr. [Name of family physician] (dated August 27, 2018) (as discussed in Privacy Concern 2).

- Third piece of information:** The Complainant's personal health information in a letter dated by August 27, 2018 by a rheumatologist to Dr. [Name of neurologist] (carbon copy to Dr. [Name of family physician]). This letter was forwarded to SaskPower by Dr. [Name of family physician] (received by SaskPower on September 4, 2018) (as discussed in Privacy Concern 2).
- [65] SaskPower enclosed medical documentation with its letter dated September 6, 2018 to CBI Health to substantiate each piece of information listed above.
- [66] Based on a review of the various consent forms signed by the Complainant provided to my office by SaskPower, I do not find one where the Complainant consented to SaskPower disclosing her personal health information to CBI Health. Therefore, I must consider if there was authority pursuant to sections 27(2), (3), (4), (5), (6), 28 or 29 of HIPA.
- [67] Section 27(2)(a) of HIPA provides as follows:
- 27(2)** A subject individual is deemed to consent to the disclosure of personal health information:
- (a) for the purpose for which the information was collected by the trustee or for a purpose that is consistent with that purpose;
- [68] To determine if section 27(2) of HIPA authorized disclosure, I must consider the purpose(s) for which SaskPower had collected the Complainant's personal health information for each of the three pieces of information listed above, if there was authority for such a collection, and if such purposes are consistent with SaskPower's purpose for disclosure to CBI Health.
- [69] As I said earlier, according to SaskPower's letter dated September 6, 2018 to CBI Health, SaskPower disclosed the Complainant's personal health information for the dual purpose of return-to-work and to approve ongoing short-term disability benefits.
- [70] I have already discussed the purpose(s) for the collection of each piece of information and whether there was authority for the collection but for ease of reference, below is a summary:

**First piece of information:** In my discussion of Privacy Concern 1, I noted that the Complainant had signed two “Plan B” forms – one dated on July 24, 2018 and the other dated August 14, 2018. The Complainant consented to Dr. [Name of neurologist] to disclose information about her to SaskPower for “the purpose of investigating and assessing her claim, administering coverage(s) [she] may have with SaskPower and administering the services provided”. I found that sections 24(4) and 26(3) of HIPA authorized SaskPower to collect personal health information.

**Second piece of information:** In my discussion of Privacy Concern 2, I noted that SaskPower requires employees to fill out the P-148 form to apply for Plan B short-term disability benefits. The Complainant had consented to Dr. [Name of family physician] to disclose the personal health information on the form itself but not any information beyond the form. I found that sections 24(4) and 26(3) of HIPA authorized SaskPower to collect Complainant’s personal health information that was recorded on the form by Dr. [Name of family physician] but that SaskPower did not demonstrate it had authority under HIPA to collect any additional information.

**Third piece of information:** As said above, I found that SaskPower had not demonstrated it had authority under HIPA to collect additional information from Dr. [Name of family physician] beyond what was recorded on the P-148 form.

[71] For the first and second pieces of information, there was authority for SaskPower to collect the Complainant’s personal health information and that the purpose for collection is consistent with the purpose for disclosure – to approve ongoing short-term disability benefits. Therefore, section 27(2)(a) of HIPA authorized the disclosure of the first and second pieces of information to CBI Health. However, for the third piece of information, I found that SaskPower had not demonstrated it had authority under HIPA to collect the personal health information in the first place. Without having the authority under HIPA to collect the personal health information, then SaskPower did not have the authority to disclose the personal health information. Therefore, I find a privacy breach occurred when SaskPower disclosed the third piece of personal health information – the letter dated August 27, 2018 by a rheumatologist – to CBI Health.

## ii. Privacy Concern 6

[72] Privacy Concern 6 is about a letter dated September 28, 2018 by SaskPower’s Corporate Physician to the Complainant. The Complainant’s family physician and physiotherapist are carbon copied. The letter contains the Complainant’s personal health information as

defined by section 2(m)(i) of HIPA. The Complainant's concern was that she had not consented to the disclosure of her personal health information by SaskPower to her family physician and physiotherapist. Specifically, information from her physiotherapist was shared with her family physician. Similarly, information from her family physician was shared with her physiotherapist.

[73] In its letter dated April 4, 2019 to the Complainant and in its submission to my office, SaskPower asserted there was no violation of HIPA.

[74] I must determine if there was authority to disclose the Complainant's personal health information by 1) consent, or 2) if sections 27(2), (3), (4), (5), (6), 28 or 29 of HIPA authorized the disclosure without consent.

[75] Based on a review of the various consent forms signed by the Complainant, I note that none of them indicate that the Complainant consented to the disclosure of her personal health information by SaskPower to the Complainant's family physician.

[76] Furthermore, the information SaskPower provided to my office in its submission – its assertion that there was no violation of HIPA – is not enough to determine if sections 27(2), (3), (4), (5), (6), 28 or 29 of HIPA authorized the disclosure of the Complainant's personal health information to the Complainant's family physician and physiotherapist.

[77] Based on a review of the letter dated September 28, 2018, I find there is no reason stated as to why the Complainant's personal health information was disclosed to the Complainant's family physician and physiotherapist.

[78] I find that SaskPower has not demonstrated it had authority to disclose the Complainant's personal health information to the Complainant's family physician and physiotherapist. As such, I find that a privacy breach has occurred.

**d. Complainant's concerns over SaskPower's disclosure of her personal information – Privacy Concern 6**

[79] FOIP, like HIPA, does not define the term “disclosure”. Therefore, my office has determined that a disclosure is the exposure of personal information to a separate entity, not a division or branch of a government institution that has possession or control of that information ([Investigation Report 345-2019](#) at paragraph [17]).

[80] Section 29(1) of FOIP provides that a government institution may disclose personal information with the consent of the individual. Where a government institution does not have the consent of an individual, it must have authority under section 29(2) or section 30 of FOIP for its disclosures.

[81] As described earlier, Privacy Concern 6 is about SaskPower's Corporate Physician's letter dated September 28, 2018 to the Complainant with carbon copies sent to the Complainant's family physician and physiotherapist. In addition to personal health information, the letter contained employment information as defined by section 24(1)(b) of FOIP.

[82] In its letter dated April 4, 2019 to the Complainant as well as in its submission to my office, SaskPower indicated, “there was no Privacy or Code of Conduct violation that occurred regarding the employment details containing the letter, as it was specifically related to the ceasing of medical benefits, and a requirement for the employee to return to work.”

[83] I must determine if SaskPower had authority under FOIP to disclose the Complainant's employment information to the family physician and physiotherapist, either by consent or if it had authority pursuant to section 29(2) or 30 of FOIP.

[84] Based on a review of the various consent forms signed by the Complainant, I note there was no consent form signed by the Complainant where she authorized SaskPower to disclose her personal information to her family physician and physiotherapist.

[85] Furthermore, based on SaskPower's submission to my office, I do not have enough information to find that either sections 29(2) or 30 of FOIP authorized the disclosure of the Complainant's personal information.

[86] I find that SaskPower has not demonstrated that it had authority under FOIP to disclose the Complainant's personal information to the Complainant's family physician and physiotherapist. As such, I find that a privacy breach has occurred.

### **III FINDINGS**

[87] I find that I have jurisdiction to investigate this matter under HIPA.

[88] I find that I have jurisdiction to investigate this matter under FOIP.

#### **Privacy Concern 1**

[89] I find that SaskPower has not demonstrated it requested such personal health information in accordance with section 23 of HIPA. However, since the neurologist did not reveal a diagnosis, I find that no privacy breach occurred.

#### **Privacy Concern 2**

[90] I find that the P-148 form signed and dated by the Complainant on August 27, 2018 provided SaskPower the authority to collect only the Complainant's personal health information that was recorded on the form by Dr. [Name of family physician] pursuant to section 24(4) and 26(3) of HIPA.

[91] I find that SaskPower has not demonstrated it had authority to collect the Complainant's personal health information as requested in its letter dated August 31, 2018 to the Complainant's physician.



[92] I find that a privacy breach occurred when SaskPower collected the Complainant's personal health information that was sought in its August 31, 2018 letter to the Complainant's family physician.

**Privacy Concern 7**

[93] I find that a privacy breach did not occur.

**Privacy Concern 4**

[94] I find that a privacy breach occurred when SaskPower's Health and Wellness Specialist carbon copied the Complainant's manager in the email dated September 17, 2018.

**Privacy Concern 5**

[95] I find a privacy breach did not occur when the Complainant's manager carbon copied his letter dated September 25, 2018 to personnel within the Labour Relations Department as SaskPower and the Complainant's union.

**Privacy Concern 3**

[96] I find a privacy breach occurred when SaskPower disclosed the third piece of personal health information – the letter dated August 27, 2018 by a rheumatologist – to CBI Health.

**Privacy Concern 6**

[97] I find that SaskPower has not demonstrated it had authority to disclose the Complainant's personal health information to the Complainant's family physician and physiotherapist. As such, I find that a privacy breach has occurred.

[98] I find that SaskPower has not demonstrated that it had authority under FOIP to disclose the Complainant's personal information to the Complainant's family physician and physiotherapist. As such, I find that a privacy breach has occurred.

#### **IV RECOMMENDATIONS**

[99] I recommend that SaskPower amend its policies and/or procedures so that it does not request information about an employee's diagnosis unless it can demonstrate it has a legitimate need-to-know such information pursuant to section 23 of HIPA.

[100] If it is a regular practice for SaskPower to collect information beyond what is requested in its P-148 form, then I recommend that SaskPower broaden and clarify the consent wording in its form. The wording should clarify that SaskPower may request additional information from an employee's physician for the purpose of processing the employee's claim for benefits.

[101] I recommend that SaskPower identify its authority under HIPA to collect an employee's personal health information from a third party (in this case, the physiotherapist). If SaskPower is relying on an employee's consent for the collection, it should provide a copy of the consent to the third party. Such information will enable the third party (in this case, the physiotherapist) to determine if they have authority to disclose personal health information.

Dated at Regina, in the Province of Saskatchewan, this 22nd day of April, 2022.

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