Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 082-2024

Ministry of Health

November 12, 2024

Summary: The Applicant submitted an access to information request to the Ministry of Health (Health). Health withheld portions of the record 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 asked the Commissioner to review Health's decision and its search efforts. The A/Commissioner found that Health's search was reasonable. The A/Commissioner found that Health did not properly apply subsection 29(1) of FOIP to the record. The A/Commissioner also found that subsection 27(1) of HIPA applied to some of the information and recommended Health continue to withhold those portions. The A/Commissioner also found that after withholding those portions of the record, the information would be sufficiently de-identified and recommended that Health release those remaining portions of the record to the Applicant within 30 days of the issuance of this Report.

I BACKGROUND

[1] On December 13, 2023, the Applicant emailed an access to information request to the Minister of Health for the following records for the time period of December 2021 to December 2023:

> With respect to COVID-19 and other related terminology, including variants (known and unknown) – comprehensive details of all adverse reactions, including and not limited to suspected, and or verified adverse reactions, from any and all vaccines used to prevent COVID-19, and patients treated for COVID-19. Details should include, and not limited to: vaccine name; vaccine manufacturer; vaccine lot number; vaccination

date; type of reaction; health region; patient's age; patient's sex; and number of doses received.

[2] On December 22, 2023, the Applicant received an email from the Senior Administrative Assistant to the Minister of Health advising that their office sent the Applicant's request to the Ministry of Health (Health) as "the MO does not handle FOIPS."

[3] On December 27, 2023, Health emailed a letter to the Applicant indicating it had received their access to information request on December 22, 2023, and that in accordance with section 2-28 of *The Legislation Act* and subsection 7(2) of *The Freedom of Information and Protection of Privacy Act* (FOIP), the Applicant could expect a response no later than January 25, 2024.

[4] In a letter dated January 25, 2024, Health advised the Applicant that it was extending the response period by 30 days to February 26, 2024, pursuant to subsections 12(1)(a)(ii) and 12(2) of FOIP.

[5] On February 29, 2024, Health emailed the Applicant its section 7 decision letter and released portions of the responsive records. Health's decision letter indicated that of the 47 pages of responsive records, parts were withheld pursuant to subsection 29(1) of FOIP and subsection 27(1) of *The Health Information Protection Act* (HIPA).

[6] On March 17, 2024, the Applicant submitted a request for review form to my office. On it, the Applicant stated the reason for their request was because they had been refused access to part of the record. In an attached letter, the Applicant added that Health "refuses to assist in its duty to provide openly, accurately, and completely. I seek a review that obliges [Health] to provide all redacted/exempted records…".

[7] On March 27, 2024, my office followed up with the Applicant to clarify their reasons for requesting a review. On April 4, 2024, the Applicant indicated that they were also requesting a review of Health's search efforts to locate responsive records and claimed that

subsections 19(3)(a) and (b) of FOIP apply - that the public interest clearly outweighs any harm to the Government of Saskatchewan and Health.

[8] On April 10, 2024, my office posed questions to Health regarding its search efforts. On April 18, 2024, Health provided its response and agreed that my office could share these details with the Applicant, which my office did on April 19, 2024. The Applicant responded the same day advising they were not satisfied with Health's response.

[9] On April 24, 2024, my office followed up with the Applicant regarding their claim of public interest as follows:

> In your Apr. 4 message, you cited 19(3)(a) and 19(3)(b) of FOIP in support of the public interest value of your request, but these relate only to the application of section 19, whereas only subsections 29(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and 27(1) of *The Health Information Protection Act* (HIPA) appear to have been applied to the Ministry's release of records responsive to your request. Therefore, 19(3)(a) and 19(3)(b) of FOIP do not appear to be engaged.
>
> However, if you wish, our office can inquire if the Ministry considered subsection 29(2)(o)(i) of FOIP when processing your request:
>
> > **Disclosure of personal information**
> >
> > **29**(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.
> >
> > (2) Subject to any other Act or regulation, personal information in the possession or under the control of a government institution may be disclosed:
> >
> > …
> > (o) for any purpose where, in the opinion of the head:
> >
> > > (i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure;
>
> There is no similar provision in HIPA.
>
> By response to this email, please advise if you wish for our review to inquire if the Ministry considered subsection 29(2)(o)(i) of FOIP.

[10] The Applicant responded on the same day stating, "my assertion of the use of section 19(3)(a) remains. [Health] may not have applied parts of section 19 in their redactions, but section 19(3)(a) test should and must be applied to any redaction regardless of this section."

[11] On April 25, 2024, my office responded to the Applicant advising that my office would be moving forward with formal notifications and again clarified the following:

> The introductory language of subsection 19(3) of FOIP points only to subsection 19(1) of FOIP. This means if a government institution has determined that the information is third party information pursuant to one of the clauses outlined in subsection 19(1) of FOIP, then the government institution can consider if disclosing the third party information (subject to subsection 19(1) of FOIP) if the disclosure, "could reasonably be expected to be in the public interest as it relates to public health, public safety or protection of the environment" and "the public interest in disclosure could reasonably be expected to clearly outweigh in importance any financial loss or gain, prejudice to the competitive position, or interfere with contractual or other negotiations of a third party."
>
> Subsection 19(3) of FOIP is not an overarching public interest override that can be applied to information withheld under any subsection of FOIP. It only applies to third party information. Hence why it is positioned under section 19. Subsection 19(1) of FOIP is not engaged in this review as Health has not denied access to any of the information pursuant to subsection 19(1) of FOIP. This means Health has not identified the information as third party information. Therefore, my office will not consider subsection 19(3) of FOIP in this review. We will, however, ask Health if it considered subsection 29(2)(o)(i) of FOIP when it denied access to some of the requested information pursuant to subsection 29(1) of FOIP. Please note that subsection 29(2)(o)(i) of FOIP also has a public interest override built in as it pertains to personal information that can be released provided certain circumstances exist.

[12] On April 25, 2024, my office notified Health and the Applicant that my office would be undertaking a review.

[13] On May 21, 2024, the Applicant asked that my office consider their arguments and supporting information included with their request for review, as well as their email communications with my office. On May 27, 2024, Health provided my office with a copy of the responsive record. On July 2, 2024, Health provided my office with its submission.

II RECORDS AT ISSUE

[14] Health identified 47 pages of responsive records; it withheld 42 pages in part (pages 1, 4, 6 to 29, 31 to 42 and 44 to 47) pursuant to subsection 29(1) of FOIP and subsection 27(1) of HIPA. The remaining 5 pages (pages 2, 3, 5, 30 and 43) were released to the Applicant, in full.

[15] The records at issue are tables capturing adverse events reported by individuals that had received a COVID-19 vaccination in the province for the time period specified by the Applicant. I note that all of the tables contain the same column headings; however, the columns are not ordered in the same way on all pages. Health released all of the column headings, but withheld the information recorded in the following 16 columns as follows:

Subsection 29(1) of FOIP

- Unique identifier
- Client Initials
- Sex
- Age

Subsection 27(1) of HIPA

- Date given
- Reportable
- Serious
- Unusual
- Unexpected
- Reaction Onset
- Reaction Duration
- Reaction

- Treatment
- Outcome
- MHO recommendation
- Comments

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[16] Health is a "government institution" as defined by subsection 2(1)(d)(i) of FOIP.

[17] 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.

[18] Health qualifies as a "trustee" as defined by subsection 2(1)(t)(i) of HIPA.

[19] Second, as noted at paragraph [15] of this Report, Health asserts that data recorded under some of the columns qualifies as personal health information pursuant to subsection 2(1)(m) of HIPA.

[20] The record at issue is a report produced by Health that contains tables of data regarding individuals that received a COVID-19 vaccination and had an adverse effect. In its submission, Health stated that:

> Subsection 23 of *The Disease Control Regulations*, made pursuant to *The Public Health Act, 1994*, requires the reporting of vaccine-associated adverse events…
>
> …
> The AEFI spreadsheet is also used by the Ministry's public health nursing consultants to track reactions to immunization, to provide non-identifiable aggregate information for posting on the Government of Saskatchewan's website on the page "Adverse Events Following Immunization for COVID-19", and to serve as a resource when responding to an inquiry from a Medical Health Officer, the Public Health Agency of Canada, or other medical professionals. The spreadsheet is an electronic file stored in a secure

> folder on a secure network drive, and is accessible to Public Health Nursing Consultants, the Chief Medical Health Officer, Deputy Chief Medical Health Officers, and epidemiologists with the Ministry for the purpose of monitoring all adverse events following immunization.
>
> The focus of the AEFI Form is on adverse reactions that have a temporal association with a vaccine and are not clearly attributed to other causes. Standard possible side effects do not need to be reported. Submission of the information also does not imply causation between a vaccine and an adverse reaction.

[21] In my office's Investigation Report 243-2023, I found that a document containing details regarding recent immunizations qualified as personal health information. Additionally, in my office's Review Report 063-2023, I reviewed Health's application of subsection 27(1) of HIPA and subsection 29(1) of FOIP to the data recorded under the same columns identified at paragraph [15] in this Report, but for a different time period. In that report, I found the information in the table qualified as personal health information. The spreadsheet contains information relating to the COVID-19 vaccine each individual received and their adverse reactions. I previously found that the same type of information in these tables qualifies as personal health information. Here, I also find that personal health information is present in the record before me as defined by subsections 2(1)(m)(i), (ii), (iv)(A) and (v) of HIPA, which provide 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;

[22] Finally, the record at issue is in the custody or control of Health, and so all three elements are present for HIPA to be engaged. Based on the above, I find that I have jurisdiction to conduct this review.

2. Did Health conduct a reasonable search for records?

[23] Section 5 of FOIP provides an applicant with a right of access to records in the possession or control of a government institution. It states:

> **5** Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a government institution.

[24] Subsection 5.1(1) of FOIP states:

> **5.1**(1) Subject to this Act and the regulations, a local authority shall respond to a written request for access openly, accurately and completely.

[25] My office's *Guide to FOIP*, Chapter 3, "Access to Records", updated May 5, 2023 (*Guide to FOIP*, Ch. 3) at page 12, states that subsection 5.1(1) of FOIP requires a government institution to respond to an applicant's access to information request openly, accurately and completely. This means that government institutions should make reasonable efforts to not only identify and seek out records responsive to an applicant's access to information request, but to explain the steps in the process.

[26] Regarding the obligation to search for records, the threshold to be met is one of "reasonableness." In other words, it is not a standard of perfection, but rather what a fair and rational person would expect or consider acceptable.

[27] The *Guide to FOIP*, Ch. 3, also states at page 12, that a reasonable search is one in which an employee, experienced in the subject matter of the records, expends a reasonable effort to locate records which are reasonably related to the request. What is reasonable depends on the request and related circumstances. The local authority should provide my office with detailed information about its search efforts to conduct a search.

[28] When a government institution receives a notice of a review from my office requesting details of its search efforts, some or all of the following can be included in the government institution's submission (not exhaustive):

- For personal information requests – explain how the individual is involved with the government institution (i.e., client, employee, former employee etc.) and why certain departments/divisions/branches were included in the search.

- For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others.

- Identify the employee(s) involved in the search and explain how the employee(s) is experienced in the subject matter.

- Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search.

- Describe how records are classified within the records management system. For example, are the records classified by:

    - Alphabet
    - Year
    - Function
    - Subject

- Consider providing a copy of your organization's record schedule and screen shots of the electronic directory (folders & subfolders).

- If the record has been destroyed, provide copies of record schedules and/or destruction certificates.

- Explain how you have considered records stored off-site.

- Explain how records that may be in the possession of a third party but in the government institution's control have been searched such as a contractor or information management service provider.

- Explain how a search of mobile electronic devices was conducted (i.e., laptops, smart phones, cell phones, tablets).

- Explain which folders within the records management system were searched and how these folders link back to the subject matter requested. For electronic folders – indicate what key terms were used to search if applicable.

- Indicate the calendar dates each employee searched.
- Indicate how long the search took for each employee.
- Indicate what the results were for each employee's search.
- Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see *Using Affidavits in a Review with the IPC*.

(*Guide to FOIP*, Ch. 3, pp. 14-15)

[29] Applicants must establish the existence of a reasonable suspicion that a government institution is withholding a record or has not undertaken an adequate search for a record (*Guide to FOIP*, Ch. 3, p. 13). In this case, the Applicant informed my office that a previous access request to Health for the same records, but for a different time period, had resulted in a record with a higher volume of pages and a more detailed release of records. There are two issues, then: the Applicant is concerned that they received fewer pages (or a lesser volume) of records, and that Health redacted more columns of data in this access request. In the Applicant's earlier request, Health had only withheld information recorded in the columns of "client initials", "sex" and "age". Whereas in this request, Health has withheld these columns, in addition to the ones identified at paragraph [15] of this Report. I will speak to this latter part later in my review of subsections 27(1) of HIPA and 29(1) of FOIP.

[30] Regarding the volume of records, however, the Applicant's concern appears to be more about what I would characterize as the difference in the number of adverse events reported between the two access requests rather than the number of pages. This has led the Applicant to believe that Health is not being open and complete in its response. The Applicant stated, in part, as follows:

> Even though the limited records provided to me were entirely redacted, the page count does not reflect real-world data. COVID vaccine adverse events continue to occur. Saskatchewan is no exception.
>
> I believe the search to be half-hearted. Adverse events for essentially 2021 provided 122 pages, while this longer time period provided a less page count (47 pages). You do not redact an entire document when a previous request provided information. Critical

> thinking concludes they are hiding relevant information with the redactions and limiting the page count.
>
> If the search were adequate, one must deduce that the Ministry of Health nor the SHA are committing due diligence and accurately recording COVID vaccine adverse events.

[31] While the number of pages the Applicant received between this access request and the previous one are quite different, it appears to be about the fewer number of adverse events found in response to this access request. For reference, each of the Applicant's access requests covers a time period of approximately 25 months, but their first request netted approximately 1,000 more recorded adverse events than this one subject of this review. With this in mind, I will consider Health's search efforts.

[32] Regarding its search efforts, Health indicated that it had already provided my office with information on its search efforts and timeline on April 18, 2024. These are the details that it had agreed for my office to share with the Applicant. Below are the questions my office posed to Health and Health's response:

> When the Applicant requested the record in question, did you conclude that further records were not in the possession of the Ministry based on your knowledge alone, did you discuss the matter with others, or did you perform a search to verify that further records did not exist in the Ministry's possession?
>
> - Upon receipt of the request, assigned file HE96-24G, it was noted that the Applicant requested the same information in 2021:
>
> *HE123-22G With respect to COVID-19 and other related terminology, including variants (known and unknown) -- comprehensive details of all adverse reactions, including and not limited to suspected, and or verified adverse reactions, from any and all vaccines used to prevent COVID-19, and patients treated for COVID-19. Details should include, and not limited to: vaccine name; vaccine manufacturer; vaccine lot number; vaccination date; type of reaction; health region; patient's age; patient's sex; and number of doses received. January 1, 2020 through to January 24, 2022.*
>
> - Additionally, our office had received 2 requests from different applicants for very similar information in the last several years.
>
> - The responsive record(s) for these requests is a report produced by the Ministry of Health's Population Health Branch, specifically, the Ministry's COVID-19

> Adverse Events Following Immunizations (AEFI) Vaccine Report, narrowed by any request parameters such as dates.
>
> If you did perform a search, what were the specifics of that search?
>
> - As with every request we receive, the request for records was sent to the subject area branch(es), in this case, Population Health Branch and Communications Branch. Each applicable area performed a search for records with the responsive records being identified as the AEFI Vaccine Report for the requested time frame.
>
> - Population Health Branch provided the responsive records to the Health Information and Privacy Analyst to apply the appropriate exemptions and prepare the record for release to the Applicant.

[33] Health stated that it forwarded the Applicant's request for records to the subject area branches, which resulted in the same report that the Applicant had received in a previous request for a different timeframe. Health confirmed with my office that it had not used any different parameters other than the date range of December 1, 2021 to December 31, 2023. In this case, as Health's search resulted in the same report that the Applicant sought albeit for a different time period (and with additional columns redacted), there does not appear to be any issue with the physical manner in which Health searched.

[34] Regarding the difference in volume, my office in its notification asked Health to comment on why the Applicant's previous access request was larger, but Health did not comment on this. In follow up, my office asked Health if it could answer why the report for this review resulted in a considerably fewer number of reported adverse events. That is, the Applicant's previous access request (for events reported between January 1, 2020 and January 24, 2022) resulted in a report from Health that included approximately 1,300 adverse events, while the one in response to this access request (for events reported between December 2021 and December 2023) resulted in approximately 330 adverse events. Health responded, stating:

> Regarding the differences in the number of events reported over different time periods, there is no single factor that would account for the lower number. The data is dependent on individuals reporting the event. A possible factor, but certainly not limited to, may be that the number of COVID-19 vaccines provided early in the campaign was

> significantly higher than later in the campaign. The number of AEFIs may then have decreased as the number of individuals seeking immunization decreased.

[35] Health would not have necessarily understood what the Applicant's concern here was, and it only needs to demonstrate that it conducted a reasonable search. Regarding the reduction in reported adverse events, however, a person might assume that, as Health states, with vaccine numbers in the early campaign being higher, there would also be a higher number of reported adverse events. Annual Reports from the Saskatchewan Health Authority (SHA) (*Annual Report 2021-22*, *Annual Report 2022-23*) provide that in the province's initial COVID-19 vaccine campaign, "over 1.4 million" first and second doses of vaccine were administered, while in later years the number of boosters, which would be a single shot only, was about a third of that number. It is reasonable, then, to conclude that fewer shots would mean fewer reported adverse events.

[36] I find Health's search efforts were reasonable and recommend it take no further action regarding search.

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

[37] Section 29 of FOIP prohibits the disclosure of personal information unless the individual about whom the information pertains consents to its disclosure, or if the disclosure without consent is authorized by one of the enumerated subsections of 29(2) or section 30 of FOIP (*Guide to FOIP*, Chapter 6, "Protection of Privacy", updated January 18, 2023 [*Guide to FOIP*, Ch. 6], p. 183). Subsection 29(1) of FOIP provides as follows:

> **29**(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

[38] Health asserts that the information found under the "unique identifier", "client initials", "sex" and "age" columns should be found to be personal information, rather than personal health information as follows:

Subsection 29(1) of FOIP has been applied to the following personal information identified throughout the 47 pages of the responsive record:

- Unique Identifier (subs. 24(1)(d);
- Client Initials (subs. 24(1)(d) and (k))
- Sex (subs. 24(1)(a)); and,
- Age (subs. 24(1)(a)).

Since the list of personal information in section 24 of FOIP is non-exhaustive, the Ministry submits that an individual's initials are personal information in the same way that a name is. Initials are not only a unique identifying symbol or other particular assigned to an individual, but also represent the name of the individual and could identify the name of the individual, so would be personal information under clause 24(1)(k) as well, when combined with the other personal information referred to here.

The unique identifier that appears in Column 1 of the responsive record includes not only a unique number for the individual who received the vaccine, but also refers to the former regional health authority in which the vaccination occurred, which significantly reduces the size of the pool of individuals who experience adverse events, and increases the risk of re-identification.

The Ministry submits that it has properly applied subsection 29(1) of FOIP to the personal information found in the responsive record.

The Ministry further submits that the information it has identified above as "personal information" is not "personal health information". Subsection 24(1.1) of FOIP provides that personal information does not include information that constitutes personal health information under HIPA. Thus, information must be either personal information or personal health information, but not both. Since ss. 24(1) of FOIP specifically identifies sex and age in clause (a), "any identifying number, symbol or other particular assigned to the individual" in clause (d), and the name of an individual where it appears with other personal information that relates to the individual in clause (k), but the definition of "personal health information" in HIPA does not refer to those terms, it is submitted that sex, age, a unique identifier and client initials are personal information rather than personal health information. In other words, the specific references in FOIP should take priority over the general reference in HIPA to information collected in providing a health service.

[39] In order to withhold information pursuant to subsection 29(1) of FOIP, the information must qualify as "personal information" as defined by subsection 24(1) of FOIP.

[40] The "unique identifier" column appears to describe an acronym identifying an area formerly associated with the regional health authority. Health states this is the area of the province where the vaccination was administered. It is not necessarily indicative of where

the individual lives. This is followed by what appears to be the year and a three-digit number. The number appears to describe an event associated to the SHA, rather than an identifying number associated to the individual. Health claims that the information recorded in this column "significantly reduces the size of the pool of individuals"; however, it did not provide any information about how many individuals in each of the former regional health authorities received COVID-19 vaccinations or experienced adverse events in order to demonstrate the pool size. As Health did not provide sufficient information to support that an individual could be identified, and because it does not appear that the number is associated to an individual, I find that Health did not properly apply subsection 29(1) of FOIP to this column of the record. I recommend that Health release the information recorded in the unique identifier column to the Applicant within 30 days of the issuance of this Report.

[41] While Health argues the information recorded in the columns "client initials", "age" and "sex" should be treated as personal information, as I noted earlier, this information was collected from the health system and relates to adverse events experienced by patients following COVID-19 immunization. Subsection 24(1.1) of FOIP states as follows:

> **24**(1.1) Subject to subsection (1.2), "personal information" does not include information that constitutes personal health information as defined in *The Health Information Protection Act*.

[42] While subsection 2(1)(m) of HIPA does not specifically list the initials, sex and age of an individual in its definition of personal health information, I note that our office has previously found that this information qualifies as "registration information" (e.g., Review Report 063-2023). Therefore, as I had found at paragraph [21] of this Report, the information does not qualify as personal information under FOIP, it constitutes personal health information as defined at subsection 2(1)(m)(v) of HIPA. As such, I find that Health did not properly apply subsections 29(1) of FOIP to the information in these columns. I will consider if the information recorded in the columns "client initials", "age" and "sex" should be withheld pursuant to subsection 27(1) of HIPA.

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

> **27**(1) A trustee shall not disclose personal health information in the custody or control of the trustee except with the consent of the subject individual or in accordance with this section, section 28 or section 29.

[44] In addition to considering whether the information recorded in the "client initials", "age" and "sex" columns should be withheld pursuant to subsection 27(1) of HIPA, Health withheld the following columns pursuant to subsection 27(1) of HIPA. These columns contain information regarding the adverse reaction experienced by an individual in Saskatchewan after receiving a COVID-19 vaccination. Health previously released these columns to the Applicant in a different access request for a different time period. The columns are as follows:

- Date given,
- Reportable,
- Serious,
- Unusual,
- Unexpected,
- Reaction Onset,
- Duration,
- Reaction,
- Treatment,
- Outcome,
- MHO recommendation, and
- Comments.

[45] Health is now providing the following arguments for why the columns listed above should be withheld:

> The date a vaccine is administered is information with respect to a health service provided to an individual and is collected in the course of providing that health service. It also relates to the physical health of the individual, as the timing of the vaccine and the individual's physical adverse reaction provides valuable information to health care providers. In terms of identification of the individual involved, the date also reduces the size of the pool of individuals who experienced adverse effects as it limits the pool to the number who were vaccinated on that date.
>
> The individual's adverse reaction, including the severity of that reaction (i.e. reportable, serious, unusual, unexpected), when the reaction occurred (i.e. reaction onset) and its duration detail aspects of the physical health of an individual (their adverse reaction and the extent and duration of that reaction), disclose information with respect to a health service provided (the vaccination and health service provided as a result of the adverse reaction) and is information that was collected in the course of providing health services to the individual (i.e. administering the vaccine and responding to the adverse reaction).
>
> The treatment and outcome detail information about the individual's physical health, the health services provided to the individual, and information that was collected while providing those health services.
>
> The MHO recommendation outlines any follow up treatment recommended or whether there should be a change to the individual's immunization schedule; this information is a recommendation about the follow up treatment and health services that should be provided to the individual. It is also information that was collected during the course of providing treatment and information with respect to the physical health of the individual. The comments column provides a health care providers' views on why the reaction occurred. As such, it is both information with respect to the individual's physical health and the health services provided to that individual, and, in some instances, information with respect to previous health services provided to the individual (for example, a similar reaction occurred when the individual received a vaccine on a previous date).
>
> When all of the preceding information for an individual is viewed together, it starts to look very much like information a person would expect to see in a medical chart. The Ministry submits that it is personal health information that falls within the definition of personal health information in HIPA. Its protection under ss. 27(1) of HIPA is mandatory.

[46] Health argued that when the information in these columns is viewed together, it looks like information in a medical chart. I do not dispute that. However, for the information to

qualify as personal health information, it would have to identify whose medical chart the information came from. I will consider, then, if the release of the information in the withheld columns could identify an individual or if it can be sufficiently identified in order to reduce the risk of re-identification.

[47] In my office's Review Report LA-2013-003 at paragraphs [65] to [69], it was found that only personal health information that cannot be sufficiently de-identified should be exempt from release under subsection 27(1) of HIPA. Pursuant to subsection 38(2) of HIPA, it was recommended that the trustee give the Applicant access to as much of the record as could be reasonably severed by sufficiently de-identifying the records. 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 be reasonably severed without disclosing the information to which the applicant is refused access.

[48] 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;

[49] Before I get into my analysis, I previously quoted Health as stating that the information in the columns looks like information that forms a "medical chart" and should be withheld on that basis. Health raised additional arguments regarding the application of subsection 27(1) of HIPA, as well as about my office's jurisdiction regarding information that is not subject to HIPA pursuant to subsection 3(2) of HIPA. Health stated, in part, as follows:

> …In terms of identification of the individual involved, the date also reduces the size of the pool of individuals who experienced adverse effects as it limits the pool to the number who were vaccinated on that date.
>
> Further, no steps other than replacing the name with initials have been taken to de-identify the information, as this information was collected only for the purposes for

> which it is required, is securely stored, and is not intended for public release. The Ministry would be concerned if the information were released pursuant to an access request because of the potential for identification or re-identification of individuals to whom the information relates.
>
> …
> As indicated above, it is the Ministry's position that the information contained in columns 6 and 8 to 18 is personal health information, and the Ministry remains concerned that there is potential for identification or re-identification if the information were to be released to the applicant. However, if the Commissioner is of the view that the information in these columns is statistical information or de-identified personal health information within the meaning of clause 3(2)(a) of HIPA, then HIPA does not apply. That means that all of HIPA does not apply, including the review provisions. Once the Commissioner makes a finding that the information is statistical or de-identified information pursuant to clause 3(2)(a), the Ministry submits that his role ends. He would not have jurisdiction to make a recommendation about the release of this information if HIPA does not apply to it.
>
> In this respect, HIPA is to be distinguished from FOIP. Under FOIP, if the Commissioner finds that information is not personal information within the meaning of s. 24, there is no provision in FOIP indicating that the Act does not apply to that information. FOIP is an access to information statute as well as a privacy statute, and the access provisions continue to apply to the information after it is found not to be personal information. The Commissioner retains the jurisdiction to make recommendations about the release of the information. In contrast, HIPA is a privacy statute and, once the Commissioner finds that the information is not personal health information (it is statistical or de-identified information) then HIPA does not apply, and the Commissioner has no jurisdiction to proceed further – no jurisdiction to make recommendations with respect to it.

[50] I have already found that the record contains personal health information pursuant to subsection 27(1) of HIPA. If you sever certain elements to de-identify personal health information in order to release it, this does not affect my office's jurisdiction.

[51] On the question of de-identifying the record to disclose it for statistical purposes, I need to think about how an individual can be identified from the data in question. The *Guide to FOIP*, Ch. 6 on pages 19 and 20, provides the following definitions:

- "De-identification" is the general term for the process of removing personal information from a record or data set.
- "De-identified information" is information that cannot be used to identify an individual, either directly or indirectly. Information is de-identified if it does not

identify an individual, and it is not reasonably foreseeable in the circumstances that the information could be used, either alone or with other information, to identify an individual.

Personal information is de-identified through a process involving the removal or modification of both direct identifiers and indirect or quasi-identifiers.

- "Direct identifiers" are fields of information that may be used to directly identify an individual; they include name, home address, telephone number, health number and social insurance number.

- "Indirect or quasi-identifiers" are fields of information that may be used on their own or in combination with other indirect or quasi-identifiers, or other information, to indirectly identify an individual. They include information such as gender, marital status, race, ethnic origin, postal code or other location information, significant dates, or one's profession. Some indirect or quasi-identifiers may be more likely to lead to the re-identification of individuals in a data set due to their rare occurrence. Characteristics which are highly uncommon in the population or in the data set, such as an unusual occupation or medical diagnosis, can increase the likelihood of the identity of an individual being revealed.

- "Re-identification" is any process that re-establishes the link between identifiable information and an individual.

[52] Further to this, the Office of the Information and Privacy Commissioner of Ontario's (Ontario IPC) resource, *De-identification Guidelines for Structured Data*, provides guidance on quasi-identifiers. It adds that quasi-identifiers are variables that have two important characteristics: 1) there is an adversary assumed to have some background knowledge of them; and 2) they can be used either individually or in combination to identify someone. Adversaries can obtain background knowledge in a number of ways, including through public registries (e.g., voters lists, phone books), in the media (obituaries) and employers (e.g., staff directories). Adversaries may also know one or more individuals (e.g., neighbour, relative), or the data may relate to a public person (e.g., a celebrity). Finally, adversaries may have access to additional source of information (e.g., data sets related to other research projects, information people post about themselves online).

[53] While Health acknowledges its concern for re-identification if it were to release the information, it has only asserted that there is a risk and not demonstrated how it could

occur. In *Commissioner's Final Report 22-213-RR*, the Information and Privacy Commissioner of Nunavut (Nunavut IPC) considered if annual tuberculosis (TB) statistics broken down by community, age and gender should be exempt from release. The Nunavut IPC concluded that the public body has the onus of demonstrating there would be a "strong possibility of re-identification." In his report, the Nunavut IPC stated that TB statistics should be disclosed except if disclosure would exceed a threshold equivalent to the "serious possibility" test; in stating this, he referenced two court decisions as follows:

> [21] The "serious possibility" test from *Gordon*, which is widely cited by courts and information commissioners in Canada, was elaborated upon in *Canada (Information Commissioner) v. Canada (Public Safety and Emergency Preparedness), 2019 FC 1279 (CanLII)*. "Serious possibility" means:
>
> > **…a possibility that is greater than speculation or a "mere possibility," but does not need to reach the level of "more likely than not"** (i.e., need not be "probable" on a balance of probabilities). **Applying such a standard recognizes the importance of access to information by not exempting information from disclosure on the basis of mere speculative possibilities, while respecting the importance of privacy rights and the inherently prospective nature of the analysis by not requiring an unduly high degree of proof that personal information will be released.**
>
> [Emphasis added]

[54] Even though Health has not argued or demonstrated that there is a "serious possibility" that an individual could be identified as a result of disclosing the information in question, I am mindful that there is a need to protect the privacy rights of those whose data is captured in the data columns. If I consider this in addition to what quasi-identifiers exist, I would likely be considering if disclosure of the "client initials", "sex" and "age" columns on their own or in combination could lead to a "strong possibility" that an individual could be identified from disclosure.

[55] The Nunavut IPC went on, in his report, to consider various factors that could lead to the risk of re-identification and the application of rules or methodologies to calculate risk. For this matter, I won't get into the same type of discussion. The point is, public bodies need to consider all the factors that increase the risk of re-identification, including what type of information itself is being reported on. For example, there may be a greater risk to re-

identification when disclosing data related to a rare medical condition versus something such as COVID-19. Simplistically, there also needs to be consideration for factors such as population size. For example, there is a difference between reporting on COVID-19 statistics for the province for a year versus for a health centre in a community of 300 for one day – a smaller pool increases the risk.

[56] In Order PO-2744, the Office of the Information and Privacy Commissioner of Ontario (Ontario IPC) considered such factors in relation to any risks posed by releasing data regarding the number of patient visits for electroshock treatments to different hospitals. The data was broken down by factors including location, gender and age group (ranging every 10 years). Ultimately, the ON IPC was not persuaded by the public body's arguments that the size of catchment areas or population densities, plus the fact that in some facilities the number of treatments would be low based on population density, would lead to rendering "information in the records identifiable." Ultimately, the ON IPC found that the catchment areas and population sizes would not contribute to re-identifying individuals if aggregate data was disclosed. The point is, there are many factors to consider when calculating the risk of disclosure rather than merely asserting there is risk.

[57] Based on this, however, it seems that the "client initials", "age" and "sex" columns are ones that I would consider should be withheld. There are some adverse events listed that if you combined them with other data and available information, such as obituaries, news articles related to COVID-19 and other sources, then the risk of re-identification could be significantly higher. Upon review, I find this is the case for at least three of the individuals whose data is captured in the records. There may be other events, that when combined with factors such as initials, sex, and/or age that there is risk for re-identification. Therefore, I find that Health has properly applied subsection 27(1) of HIPA to the "client initials", "age" and "sex" columns and recommend that it continue to withhold these columns.

[58] This brings me to the question of the remaining columns, which are outlined at paragraph [44] of this Report. I am not persuaded by Health's arguments that the data in these columns would, either on their own or in combination with each other, lead to the identification of

an individual who experienced an adverse event. For example, if you look at the treatment column, in many cases it recommends a common over-the-counter pain reliever that thousands of people in the province would take. Many of the reactions reported appear to be common ones that anyone receiving any vaccination would have. An applicant would need to know a lot about the thousands of people throughout the province who report events and their often-ordinary reactions to be able to piece together, in the absence of demographic information or data such as age and sex, an identity. That notion is exceedingly remote.

[59] After withholding the information recorded in the "client initials", "sex" and "age" columns, the remaining information in the table would be sufficiently de-identified and subsection 27(1) of HIPA would no longer apply to them. I recommend that after continuing to withhold the "client initials", "sex" and "age" columns that Health release the columns identified at paragraph [44] of this Report to the Applicant within 30 days of the issuance of this Report.

[60] As noted earlier, the Applicant also asserted that it was in the public interest to release the records. As discussed above, I am recommending the release of the information in the record, except for where I have found that Health properly applied subsection 27(1) of HIPA. As the information qualifies as personal health information, FOIP does not apply to this information in the record, and as HIPA does not have a public interest provision to consider, there is no need for me to consider if the release is in the public interest.

[61] However, government institutions should be aware that the public is interested in government data for a variety of purposes and has a right of access to it. While Health has noted that it is mandatory for it to collect data on adverse events and that it uses the information to develop and oversee its immunization programs, HIPA provides for the disclosure of de-identified information for statistical purposes. In the Applicant's previous request, Health had released the columns listed at paragraph [44] but has withheld these same columns from the Applicant in this request without strong rationale for doing so. Health needs to implement a methodology for de-identifying records in a consistent manner

that allows for de-identified or statistical information to be released to the public for research and information purposes.

[62] Also of note, the redacted copy of the records Health provided to my office show that Health used "white space redaction" to sever the information.

[63] The *Guide to FOIP*, Ch. 3 at page 69, states that my office discourages the use of white space redacting. White space redacting is where software removes the content of a record in such a way that it renders the redacted content indistinguishable from the blank background of the document. This type of redacting creates uncertainty as to what, if anything, has been redacted. White space redaction lacks specificity because when reviewing the responsive pages, an applicant cannot tell if the white space accounts for a missing line, paragraph, table, image etc. or if the page was naturally left blank. Government institutions have a duty to assist applicants by responding openly, accurately and completely. Invisible white space redactions fall short of this mandatory duty. Applicants should be able to evaluate the amount of missing information. The preference is black-out or grey-out redacting which allows sufficient visual context to indicate the length and general nature of the information (e.g., chart, column, list, sentence or paragraph).

[64] I note in my office's Review Report 288-2023, to promote openness, transparency and accountability, I suggested that Health consider using black-out grey-out severing when processing records. I again encourage Health to refer to my office's blog, issued June 21, 2017, titled *Severing* for additional guidance.

IV FINDINGS

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

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

[67] I find that subsection 27(1) of HIPA applies to the information recorded in the "client initials", "age" and "sex" columns.

[68] I find that after withholding the information recorded in the "client initials", "age" and "sex" columns, the information in the table outlined at paragraph [44] of this Report would be sufficiently de-identified and that subsection 27(1) of HIPA would no longer apply to this information.

V RECOMMENDATION

[69] I recommend that Health continue to withhold the information recorded in the "client initials", "sex" and "age" columns and release the information in the columns identified at paragraph [44] of this Report as well as the information in the "unique identifier" column to the Applicant within 30 days of the issuance of this Report.

Dated at Regina, in the Province of Saskatchewan, this 12th day of November, 2024.

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