



Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 053-2016

Saskatchewan Government Insurance

July 20, 2016

Summary: The Complainant alleged that Saskatchewan Government Insurance (SGI) over collected his personal health information. The Commissioner found the collection provisions of *The Health Information Protection Act* (HIPA) did not apply to SGI but encouraged SGI to follow best practices. He found there was not an over collection of personal health information.

I BACKGROUND

[1] On March 8, 2016, my office received a complaint that Saskatchewan Government Insurance (SGI) had over collected personal health information. The Complainant alleged that SGI had collected information about his place of birth and his mental health. He was worried that the information would prejudice him in an upcoming appeal and requested that the information be removed from his file.

[2] SGI addressed these concerns directly with the Complainant on several occasions, but he was not satisfied with the response. On May 4, 2016, our office provided notification to both the Complainant and SGI of our intention to undertake an investigation.

II DISCUSSION OF THE ISSUES

1. Does the collection provisions of HIPA apply in this case?

[3] *The Health Information Protection Act* (HIPA) can apply when three elements are present. The first element is personal health information, the second element is a trustee, and the third element is whether the trustee has the personal health information in its custody or control.

[4] The Complainant is concerned that SGI over collected information about his mental health. This would qualify as personal health information pursuant to subsection 2(m) of HIPA.

[5] SGI qualifies as a trustee pursuant to subsection 2(t)(i) of HIPA which states that government institutions are trustees. SGI is a government institution pursuant to subsection 2(1)(d)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP) and Part I of the Appendix of the FOIP Regulations. The personal health information in question is under SGI's custody or control.

[6] Subsections 4(4)(b) and 4(6) of HIPA provides:

4(4) Subject to subsections (5) and (6), Parts II, IV and V of this Act do not apply to personal health information obtained for the purposes of:

...

(b) Part VIII of *The Automobile Accident Insurance Act*;

...

(6) *The Freedom of Information and Protection of Privacy Act* and *The Local Authority Freedom of Information and Protection of Privacy Act* apply to an enactment mentioned in subsection (4) unless the enactment or any provision of the enactment is exempted from the application of those Acts by those Acts or by regulations made pursuant to those Acts.

[7] Part IV of HIPA covers the rules regarding collection of personal health information from which SGI is excluded. Subsection 23(1) of HIPA provides:

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.

[8] Subsections 24(1) and (4) of HIPA provides:

24(1) A trustee shall ensure that the primary purpose for collecting personal health information is for the purposes of a program, activity or service of the trustee that can reasonably be expected to benefit the subject individual.

...

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

[9] These subsections set out reasonable principals that the Legislature has said applies to all trustees under HIPA. Subsection 23(1) establishes the principal of need-to-know. Subsections 24(1) and (4) establish that the primary purpose for collecting personal health information should be for the program being administered, unless consent is gained from the subject individual.

[10] As stated, these subsections do not apply to SGI but they do outline principals that I would hope every trustee and government institution would honor just because it is fair and reasonable.

2. What sections of HIPA do apply?

[11] I have concluded Parts II, IV and V of HIPA do not apply to SGI but Parts I, III, VI, VII and VIII do apply. The following subsection is relevant to the current case.

[12] Subsection 20(2) of HIPA in Part III provides:

20(2) Where personal health information disclosed by one trustee becomes a part of the records of the trustee to whom the information is disclosed, the trustee to whom the information is disclosed is subject to the same duties with respect to that information as the trustee that discloses the information.

[13] The receiving trustee is under the same duties as the sending trustee. In this case, SGI is under the same duties as the physician. The physician was and is subject to Part IV of HIPA. That Part deals with collection and use of personal health information. In particular subsections 23(1) and 24(1) (quoted above) bind SGI to the duties of the sending trustee.

3. Has there been an over collection of personal health information in this case?

[14] As noted, the Complainant has concerns about statements regarding his place of birth written by a physician in two Independent Medical Examination reports. The statements relate to the Complainant's mental health as evaluated during a tertiary assessment made by a psychiatrist.

[15] In the reports, the statements in question do relate to the Complainant's mental health. SGI has indicated that this personal health information was relevant to the adjudication of his injury benefits. As such, the primary purpose for collecting personal health information is for the purposes of the program of assessing the Complainant's entitlement for no-fault benefits.

[16] The Complainant alleges that the psychologist involved in the tertiary assessment verbally assured the Complainant that the information resulting from that session would remain confidential. However, the Complainant also signed a consent form with SGI which stated:

I understand and agree that SGI may share the information regarding my claim for benefits with health care professionals, vocational rehabilitation professionals, Saskatchewan Community Resources & Employment, and independent adjusters. I further understand and agree that to better facilitate the administration of my claim, medical or vocational information may be exchanged directly between health care professionals or vocational rehabilitation professionals and I hereby authorize such direct exchange or provision of information.

[17] In my view, the collection of personal health information in this instance is in line with the standard set by subsections 24(1) and (4) of HIPA.

III FINDINGS

[18] I find that Part IV of HIPA does not apply to personal health information collected by SGI for the purposes of the administration of Part VIII of *The Automobile Accident Insurance Act*.

[19] I find there was no over collection of personal health information.

IV RECOMMENDATION

[20] I have no recommendations at this time.

Dated at Regina, in the Province of Saskatchewan, this 20th day of July, 2016.

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