



INVESTIGATION REPORT 114-2023

No trustee

September 7, 2023

Summary:

The Complainant sent a text to the Medical Transportation Manager at the Onion Lake Health Board Inc. (OLHBI) to see when they were going to be picked up and transported to an appointment. The Medical Transportation Manager responded by sending an image of a list of five patients that were to be picked up by a particular driver. The Complainant complained that the Medical Transportation Manager did not protect the confidentiality of its clients including them. The Complainant was dissatisfied with OLHBI's response, so they submitted a complaint to the Commissioner. However, the Commissioner determined that he does not have jurisdiction over this matter. Therefore, the Commissioner did not have any recommendations.

I BACKGROUND

- [1] The Complainant sent a text message to the Medical Transportation Manager at the Onion Lake Health Board Inc. (OLHBI) to see when they were going to be picked up and transported to an appointment. The Medical Transportation Manager responded to the Complainant by sending an image of a list of five patients that were to be picked up by a particular driver. The image contained the names of patients, house numbers, times the patients were scheduled to be picked up, and doctor (or medical clinic) to be dropped off/picked up at. Included in the image was the Complainant's name and information.
- [2] In a letter dated January 28, 2023, the Complainant submitted a complaint to OLHBI that the Medical Transportation Manager had not protected the confidentiality of its clients.
- [3] In an undated letter, the Privacy Officer at OLHBI responded to the Complainant as follows:

We are writing to inform you of an incident involving your personal health information on Friday November 22, 2022. We are notifying you in as timely a manner as possible as is required by Onion Lake Health Board Inc. Policy and Legislation. Onion Lake Health Board Inc. will also be taking steps to reduce or eliminate potential harm to you.

The personal health information that has been inadvertently disclosed, was your name.

As a result of this incident, we have taken corrective actions to prevent a similar incident from occurring.

We regret that this breach has occurred and wish to express our sincerest apology for any inconvenience or concern that this incident may have caused you.

You may also contact the Office of the Information and Privacy Commissioner at

...

We, at Onion Lake Health Board Inc. take very seriously our role of safeguarding your personal health information and using it in an appropriate manner for your health care. We will keep you informed if any additional information regarding the incident becomes available. In the meantime please do not hesitate to contact me at the Health and Wellness office for further information on this incident.

[4] On April 21, 2023, the Complainant submitted a complaint to my office.

[5] On July 17, 2023, my office notified OLHBI and the Complainant that my office would undertake an investigation to determine if my office has jurisdiction over this matter.

[6] On August 11, 2023, OLHBI provided a submission.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[7] My office provides oversight for three laws: *The Health Information Protection Act* (HIPA), *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), and *The Freedom of Information and Protection of Privacy Act* (FOIP). I will determine if any of these three laws apply to this matter involving OLHBI's employee (the Medical Transportation manager) and OLHBI's Medical Transportation program.

HIPA

[8] HIPA is engaged when three elements are present: 1) there is a trustee, 2) there is personal health information, and 3) the trustee has custody and/or control over the personal health information. Therefore, I must determine if all three elements are present. If so, then I have jurisdiction. If not, then I do not have jurisdiction.

a. Is there a trustee?

[9] Subsection 2(1)(t) of HIPA defines “trustee” as follows:

2(1) In this Act:

...

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

(i) a government institution;

(ii) the provincial health authority or a health care organization;

(iii) Repealed. 2002, c.R-8.2, s.77.

(iv) a licensee as defined in *The Personal Care Homes Act*;

(v) a person who operates a facility as defined in *The Mental Health Services Act*;

(vi) a licensee as defined in *The Health Facilities Licensing Act*;

(vi.1) a licensee as defined in *The Patient Choice Medical Imaging Act*;

(vii) an operator as defined in *The Ambulance Act*;

(viii) a licensee as defined in *The Medical Laboratory Licensing Act, 1994*;

(ix) a proprietor as defined in *The Pharmacy and Pharmacy Disciplines Act*;

(x) a community clinic;

(A) as defined in section 263 of *The Co-operatives Act, 1996*;

(B) Repealed. 2014, c.17, s.7.

(C) incorporated or continued pursuant to *The Non-profit Corporations Act, 2022*;

(xi) the Saskatchewan Cancer Foundation;

(xi.1) subject to subsection (2), Health Shared Services Saskatchewan within the meaning of *The Health Shared Services Saskatchewan (3sHealth) Act*;

(xii) a person, other than an employee of a trustee, who is:

(A) a health professional licensed or registered pursuant to an Act for which the minister is responsible; or

(B) a member of a class of persons designated as health professionals in the regulations;

(xiii) a health professional body that regulates members of a health profession pursuant to an Act;

(xiv) a person, other than an employee of a trustee, who or body that provides a health service pursuant to an agreement with another trustee;

(xv) any other prescribed person, body or class of persons or bodies;

[Emphasis added]

i. Is OLHBI a trustee pursuant to subsection 2(1)(t)(x)(C) of HIPA?

[10] OLHBI is a charitable corporation pursuant to *The Non-Profit Corporations Act, 2022*. In order for it to qualify as a trustee pursuant to subsection 2(1)(t)(x)(C) of HIPA, it needs to qualify as a “community clinic”. In my office’s [Review Report 059-2020](#), I noted that section 263 of *The Co-operatives Act, 1996* defines “community clinic” as follows:

263 In this Part:

“**community clinic**” means a co-operative incorporated, continued or registered pursuant to this Act whose primary objectives are:

(a) to promote a scheme of providing health or hospital services to its members and their dependants on a mutual benefit plan;

(b) to establish, maintain and operate facilities for group medical practice of duly qualified medical practitioners;

(c) to establish, maintain and operate facilities for health care; or

(d) to encourage and provide financial assistance for medical research in the community; («*clinique communautaire*»)

[11] Based on documentation provided to my office, OLHBI is not a “community clinic” as defined by section 263 of *The Co-operatives Act, 1996*. Therefore, it does not qualify as a “trustee” as defined by subsection 2(1)(t)(x)(C) of HIPA.

ii. Is OLHBI a trustee pursuant to subsections 2(1)(t)(iv), (v), (vi), (vi.1), (vii), (viii) of HIPA?

[12] In the course of this investigation, my office contacted the Ministry of Health (Health) to determine whether it had issued any license to OLHBI pursuant to the following Acts:

- *The Personal Care Homes Act,*
- *The Mental Health Services Act,*
- *The Health Facilities Licensing Act,*
- *The Patient Choice Medical Imaging Act,*
- *The Ambulance Act,* and/or
- *The Medical Laboratory Licensing Act, 1994.*

[13] If so, then OLHBI would qualify as a trustee pursuant to subsections 2(1)(t)(iv), (v), (vi), (vi.1), (vii), (viii) of HIPA.

[14] In response, Health indicated that it is issuing a license to “Onion Lake Developments Ltd.” under *The Ambulance Act*. Therefore, my office had to determine if Onion Lake Developments Ltd. is a part of the OLHBI.

[15] OLHBI provided my office with the following documentation that indicated that “Onion Lake Developments Inc.” is an entity separate from OLHBI:

- Government of Saskatchewan Certificate and Articles of Incorporation for 570761 Saskatchewan Ltd. under *The Business Corporations Act* (dated July 5, 1984).
- Government of Saskatchewan Certificate and Articles of Amendment for the corporate name change from 570761 Saskatchewan Ltd. to Onion Lake Developments Inc. (dated August 13, 1984).

[16] As such, Onion Lake Developments Inc is a business corporation. Further, the services provided involved in this alleged privacy breach do not involve an ambulance operator but a transportation service.

[17] Earlier, I had found that OLHBI is a charitable corporation under *The Non-Profit Corporations Act, 2022*. I find that OLHBI does not qualify as a “trustee” as defined by subsections 2(1)(t)(iv), (v), (vi), (vi.1), (vii), (viii) of HIPA.

iii. Is OLHBI a trustee pursuant to subsection 4(b) of *The Health Information Protection Regulations (HIPA Regulations)*?

[18] I note effective August 1, 2023, the HIPA regulations were amended. Subsection 4(b) of the HIPA Regulations expands the definition of “trustee”. The complaint and the disclosure occurred prior to August 1, 2023, and thus, the new definition of “trustee” does not apply to this complaint. If the disclosure had occurred after August 1, 2023, I would have had to determine whether OLHBI fit into the new definition of “trustee”. That is not necessary here.

iv. Do the physicians who work at OLHBI qualify as trustees under HIPA?

[19] OLHBI provided my office with a 2016 agreement between itself and the Prairie North Regional Health Authority (PNRHA) (now a part of the Saskatchewan Health Authority). The agreement provides that PNRHA is to provide contracted physician services, as funded by the Ministry of Health, to OLHBI.

[20] Physicians qualify as trustees pursuant to subsection 2(1)(t)(xii)(A) of HIPA. Since there are trustees present in this case, I must determine if there is personal health information.

b. Is there personal health information?

[21] The information at issue is the image of a list of patients that were to be transported. The image included patient names, their house numbers, times the patients were scheduled to be dropped off/picked up at, and where they were receiving medical services.

[22] Subsection 2(1)(m) of HIPA provides:

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;

...

(v) registration information;

[23] Subsection 2(1)(q) of HIPA provides:

2(1) In this Act:

...

(q) “**registration information**” means information about an individual that is collected for the purpose of registering the individual for the provision of health services, and includes the individual’s health services number and any other number assigned to the individual as part of a system of unique identifying numbers that is prescribed in the regulations;

[24] The information at issue would have made up at least part of the information used to register the individuals for health services. The information at issue also revealed that individuals were receiving health services (in some cases, it revealed the type of health service). I find that the information at issue qualifies as personal health information as defined by subsections 2(1)(m)(i) and (v) of HIPA.

c. Do the trustees have custody or control of the personal health information?

[25] Earlier, I found that physicians qualify as trustees pursuant to subsection 2(1)(t)(xii)(A) of HIPA. As such, I must determine if the physicians have custody or control over the personal health information at issue.

[26] “Custody” is a physical possession of a record by a trustee with a measure of control. “Control” means having authority over a record. A record is under a trustee’s control when the trustee has the authority to manage the record, including its disposal ([Investigation Report 158-2022](#) at paragraph [16]). In this case, I should note that it was a OLHBI employee who disclosed the personal health information at issue and not a physician. Therefore, I need to determine who has “control” over the personal health information.

[27] The agreement between PNRHA and OLHBI explicitly provides that OLHBI is the “sole trustee” of personal health information, including information within the electronic medical record and information regarding appointments. It says:

4. The equipment, supplies, computers required to provide medical care will be provided by Onion Lake Health Board Incorporated. The physicians will use the OLHBI Med Access the electronic medical record (“EMR”). **OLHBI is the sole trustee of this instance and owns the information in accordance with Ownership Control Accountability Possession (“OCAP”).**

...

10. Personal Health Information: If Personal Health Information is going to be accessed through the Prairie North Network, Onion Lake Health Board Incorporated and Prairie North agree to:

...

ii. Information may be accessed or shared insofar as necessary for the performance of medically necessary services - as per implied individual consent for specific limited use for the medical care necessary on the day of treatment/assessment. **The instances may be but not limited to patients requests for test results or a patient request for a medical appointment outside of Onion Lake. The OLHBI med access instance remains under the trusteeship of Onion Lake Health Board Incorporated and as such is subject to the principles of OCAP.**

[Emphasis added]

[28] Based on the above, OLHBI has custody or control over the personal health information, not the physicians. Earlier, I found that that OLHBI does not qualify as a trustee as defined by subsection 2(1)(t) of HIPA. Therefore, I find that HIPA is not engaged.

LA FOIP

[29] In the course of my office’s investigation, the Complainant had asked my office if LA FOIP may be applicable to this matter. In order for LA FOIP to be engaged, a “local authority” as defined by subsection 2(1)(f) of LA FOIP must be present. Subsection 2(1)(f) of LA FOIP provides:

2(1) In this Act:

...

(f) “local authority” means:

(i) a municipality;

(ii) Repealed. 2002, c.C-11.1, s.389.

(iii) Repealed. 2002, c.C-11.1, s.389.

(iv) a committee of a council of a municipality;

(v) any board, commission or other body that:

(A) is appointed pursuant to *The Cities Act, The Municipalities Act or The Northern Municipalities Act, 2010*; and

(B) is prescribed;

(vi) the board of a public library within the meaning of *The Public Libraries Act, 1984*;

(vii) the Northern Library Office established pursuant to *The Public Libraries Act, 1984*;

(viii) any board of education or conseil scolaire within the meaning of *The Education Act*;

(viii.1) a police service or regional police service as defined in *The Police Act, 1990*;

(ix) a regional college within the meaning of *The Regional Colleges Act*, other than the Saskatchewan Indian Community College;

(x) the Saskatchewan Polytechnic;

(xi) the University of Saskatchewan, including Saint Thomas More College;

(xii) the University of Regina, including:

(A) Campion College; and

(B) Luther College with respect to its post-secondary level activities;

(xiii) the provincial health authority or an affiliate, as defined in *The Provincial Health Authority Act*;

(xiii.1) subject to subsection (2), Health Shared Services Saskatchewan within the meaning of *The Health Shared Services Saskatchewan (3sHealth) Act*;

...

(xvii) any board, commission or other body that:

(A) receives more than 50% of its annual budget from the Government of Saskatchewan or a government institution; and

(B) is prescribed;

[30] OLHBI does not qualify as a local authority as defined by subsection 2(1)(f) of LA FOIP. Therefore, I find that LA FOIP is not engaged.

FOIP

[31] While neither OLHBI nor the Complainant raised FOIP as potentially applying to this matter, I will complete an analysis to determine if FOIP applies to this matter for the sake of completeness. FOIP is engaged when a government institution as defined by subsection 2(1)(d) of FOIP is present. Subsection 2(1)(d) of FOIP provides:

2(1) In this Act:

...

(d) “**government institution**” means, subject to subsection (2):

(i) the office of Executive Council or any department, secretariat or other similar agency of the executive government of Saskatchewan; or

(ii) any prescribed board, commission, Crown corporation or other body, or any prescribed portion of a board, commission, Crown corporation or other body, whose members or directors are appointed, in whole or in part:

(A) by the Lieutenant Governor in Council;

(B) by a member of the Executive Council; or

(C) in the case of:

(I) a board, commission or other body, by a Crown corporation; or

(II) a Crown corporation, by another Crown corporation;

[32] OLHBI does not qualify as a “government institution” as defined by subsection 2(1)(d) of FOIP. Therefore, I find that FOIP is not engaged.

[33] Finally, I should note that OLHBI provided my office with a copy of the “Onion Lake Privacy Law”. Article 13 of this law says, “this law shall be effective on the date accepted by the Chief and Council of Onion Lake along with the adoption by the Elders and the citizens of Onion Lake.” It appears that the majority of citizens of the Onion Lake Band voted in favour of adopting such a law. However, my office does not have any jurisdiction over privacy laws adopted by a Band or its members.

[34] I find that I have no jurisdiction over this matter.

[35] I note that the federal law *Personal Information Protection and Electronic Documents Act* (PIPEDA) applies to federal works, undertakings and businesses (FWUBs). The Office of the Privacy Commissioner of Canada (OPC) provides oversight for the law PIPEDA. According to its [Early Resolution Case Summary #2016-03](#), I note that the OPC considered a matter involving the personal health information of an employee of a First Nation band council. It is unclear if PIPEDA would apply to the personal information or personal health information of a non-employee of a First Nation band council. However, I suggest that the Complainant contact the OPC to determine if PIPEDA would be applicable to this matter.

III FINDING

[36] I find that I have no jurisdiction over this matter.

IV RECOMMENDATION

[37] Since I do not have jurisdiction, I do not have any recommendations.

Dated at Regina, in the Province of Saskatchewan, this 7th day of September, 2023.

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