

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

INVESTIGATION REPORT 151/2014

Ministry of Justice (Corrections & Policing)

Summary: The Commissioner received a complaint that the Ministry of Justice (Justice) had collected and disclosed personal health information without authority. The Commissioner found that Justice had authority to collect and disclose the Complainant's personal health information pursuant to subsections 24(1), 25(1)(f), 27(a), (b) and 27(4)(b) of *The Health Information Protection Act*.

I BACKGROUND

[1] On November 21, 2014, my office received a complaint regarding the Ministry of Justice (Corrections & Policing) (Justice). The nature of the complaint centered on collection and disclosure of the Complainant's personal health information. The complaint stated the following:

...The issue I am bringing forward is the one where confidential information was shared and obtained from the Hearing Aid Plan.

[2] Prior to coming to my office, the Complainant raised his privacy concerns with Justice in letters dated October 6th and November 6th, 2014. Justice proceeded to investigate and met with the Complainant on December 16, 2014 to discuss its findings and recommendations. Justice found that a privacy breach had not occurred. The Complainant was not satisfied and proceeded to file a complaint with my office.

[3] In an email dated December 17, 2014, my office notified both parties of its intention to conduct an investigation. My office requested a copy of the internal investigation report completed by Justice. On December 19, 2014 my office received a copy.

II DISCUSSION OF THE ISSUES

[4] Justice is a “trustee” pursuant to subsection 2(t)(i) of *The Health Information Protection Act* (HIPA).

1. Is there personal information involved?

[5] Our customary analysis when dealing with a complaint under Part IV of HIPA is to first determine whether there is “personal health information” involved and then to consider which of the three data transactions are engaged, i.e. collection, use and/or disclosure.

[6] The definition of “personal health information” is found at section 2(m) of HIPA and includes:

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;

(iii) information with respect to the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;

(iv) information that is collected:

(A) in the course of providing health services to the individual; or

(B) incidentally to the provision of health services to the individual;

or

(v) registration information;

[7] The information that appears to have been collected and disclosed involved dates, services provided and charges involving the Complainant and the Hearing Aid Plan. This type of information would constitute the personal health information of the Complainant as it pertains to the physical health of the Complainant pursuant to subsection 2(m)(i) of HIPA. Further, it pertains to a health service provided to the Complainant pursuant to subsection 2(m)(ii) of HIPA.

[8] Therefore, as there is personal health information involved, HIPA is engaged on these matters and the rules around collection, use and/or disclosure apply.

2. Did Justice have authority to “collect” and “disclose” the personal health information of the Complainant?

[9] As noted earlier in this Investigation Report, the allegation involves the collection and disclosure of personal health information by Justice.

[10] *Collection* is defined at subsection 2(b) of HIPA:

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;

[11] The relevant provisions for collection under HIPA are found at sections 24 and 25 of HIPA which provide:

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.

(2) A trustee may collect personal health information for a secondary purpose if the secondary purpose is consistent with any of the purposes for which personal health information may be disclosed pursuant to section 27, 28 or 29.

(3) Nothing in this Act prohibits the collection of personal health information where that collection is authorized by another Act or by a regulation made pursuant to another Act.

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

25(1) Subject to subsection (2), a trustee shall collect personal health information directly from the subject individual, except where:

(a) the individual consents to collection of the information by other methods;

(b) the individual is unable to provide the information;

(c) the trustee believes, on reasonable grounds, that collection directly from the subject individual would prejudice the mental or physical health or the safety of the subject individual or another individual;

(d) the information is collected, and is necessary, for the purpose of:

(i) determining the eligibility of the individual to participate in a program of the trustee or receive a product or service from the trustee, in the course of processing an application made by or on behalf of the individual; or

(ii) verifying the eligibility of the individual who is participating in a program of the trustee or receiving a product or service from the trustee;

(e) the information is available to the public;

(f) the trustee collects the information by disclosure from another trustee pursuant to section 27, 28 or 29; or

(g) prescribed circumstances exist.

(2) Where the collection is for the purpose of assembling the family health history of an individual, a trustee may collect personal health information from the individual about other members of the individual's family.

(3) Where a trustee collects personal health information from anyone other than the subject individual, the trustee must take reasonable steps to verify the accuracy of the information.

(3.1) Subsection (3) does not apply to personal health information collected by the Saskatchewan Archives Board for the purposes of *The Archives Act, 2004*.

[12] In its submission, Justice asserted that it had authority to collect the Complainant's personal health information pursuant to subsection 24(1) of HIPA as it was doing so for an activity which was reasonably believed would assist the Complainant in terms of his earlier access to information request and concerns around the proper running of an internal program. The Complainant had concerns that what had been ordered and received with regards to his medical supplies was not correct and that something inappropriate may have been occurring. As a result, the Complainant made an access to information request for records related to what had been billed and what had been received. Justice had concerns with its records not being complete or accurate in terms of responding to the Complainant's concerns. Justice was acting to provide information that would enable the Complainant to compare what was ordered and received by the Medical Unit with what had been provided to him. This collection was also to satisfy Justice that its internal program was running appropriately.

[13] Subsection 24(1) of HIPA contains three key elements:

1. The collection must be for a service of the trustee;
2. That service must be one that can reasonably be expected to benefit the patient; and
3. The service to the patient must be the primary purpose for the collection activity

[14] The Medical Unit is responsible for ordering and receiving medications and medical supplies on behalf of inmates. There were concerns raised by the Complainant that medications and/or medical supplies were being ordered unnecessarily on his behalf. This is an internal service that may have had problems which needed to be looked at by Justice. Addressing such a problem would benefit the Complainant along with others in receipt of similar services from Justice.

[15] Therefore, I agree with Justice that it had authority to collect the personal health information pursuant to subsection 24(1) of HIPA. Further, from a review of the personal health information collected, it appears that only the personal health information that was

reasonably necessary for the purpose of confirming what was ordered and received was collected in compliance with subsection 23(1) of HIPA.

[16] With regards to section 25 of HIPA, which addresses the manner of collection, it should be directly from the individual unless one of the other subsections of section 25 applies. Justice asserted that subsection 25(1)(f) of HIPA applied in this case. Subsection 25(1)(f) of HIPA points to authority to collect indirectly by disclosure from another trustee pursuant to sections 27, 28 or 29. In order to determine whether subsection 25(1)(f) of HIPA applies, I must now consider whether there was authority to disclose pursuant to sections 27, 28 or 29.

[17] *Disclosure* is not defined in HIPA. However, it is the sharing of personal health information with a separate entity, not a division or branch of the trustee. Disclosure occurred in this case when Justice shared some of the Complainant's personal health information with the Hearing Aid Plan during its collection of the Complainant's personal health information.

[18] Justice asserted that subsections 27(2)(a) and (b) applied in this case. Subsections 27(2)(a) and (b) of HIPA provide:

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;

(b) for the purpose of arranging, assessing the need for, providing, continuing, or supporting the provision of, a service requested or required by the subject individual;

...

[19] For subsection 27(2)(a) of HIPA, Justice argued that the disclosure was made to assist the Applicant with the information he was seeking under the access to information request and to address his concerns regarding appropriate billing of medications and medical supplies. Further, for subsection 27(2)(b) of HIPA, Justice argued that the disclosure was

also for the purpose of arranging, assessing the need for, providing, continuing, or supporting the provision of a service requested or required by the Complainant. Justice asserted that it understood that it was providing a service in response to a request from the Complainant on his billings and what had been ordered for him but not delivered. Justice added that similar information is provided to the Medical Unit in invoices when Supplementary Health does not cover certain supplies and services for inmates. Justice then pays the bill. Justice is responsible for ensuring proper medical care of inmates. In this case, the Complainant was not following the proper process of ordering supplies from the Hearing Aid Plan through the Medical Unit.

[20] Although not raised by Justice, based on the facts presented in this case, it may have been able to rely on subsection 27(4)(b) of HIPA as well which provides:

27(4) A trustee may disclose personal health information in the custody or control of the trustee without the consent of the subject individual in the following cases:

...

(b) where, in the opinion of the trustee, disclosure is necessary for monitoring, preventing or revealing fraudulent, abusive or dangerous use of publicly funded health services;

[21] The Complainant had been raising concerns regarding potential improper ordering and billing of medications and/or medical supplies by the Medical Unit. The Complainant had raised this concern with Justice. Justice indicated in its submission that it did compare its records with the information received from the Hearing Aid Plan to ensure that charges and supplies matched and nothing improper had occurred. Justice indicated in its submission that the Complainant's concerns were interpreted as an allegation of fraud – that the Medical Unit had ordered supplies (drugs, hearing aid supplies, etc.) that were paid for by Supplementary Health but not provided to him. It was a serious allegation that Justice took seriously and responded to.

[22] Therefore, I find that Justice had authority to disclose the Complainant's personal health information to the Hearing Aid Plan pursuant to subsection 27(2)(a), (b) and 27(4)(b) of HIPA. Given this finding, I also find that Justice had authority to collect the personal health information indirectly pursuant to subsection 25(1)(f) of HIPA.

[23] Prior to my office's involvement, Justice investigated and found that no privacy breach had occurred. Despite its finding, Justice committed to the Complainant that it would provide additional privacy training to its staff. This training was delivered on December 16, 2014. Justice appears to have taken this step in an effort to resolve the privacy concerns of the Complainant.

III FINDINGS

[24] I find that there was personal health information involved in this matter.

[25] I find that Justice had authority to collect and disclose the Complainant's personal health information pursuant to subsections 24(1), 25(1)(f), 27(a), (b) and 27(4)(b) of HIPA.

IV RECOMMENDATIONS

[26] As it appears that Justice had authority for the collection and disclosure of the personal health information, there are no recommendations at this time.

Dated at Regina, in the Province of Saskatchewan, this 22nd day of January, 2015.

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